

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) JUNE 21, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 38
 DEFENDANT.)
) PAGES 6929 - 7156

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 A P P E A R A N C E S: (CONT'D)

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29 UNITED STATES POSTAL INSPECTION SERVICE
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31 FEDERAL BUREAU OF INVESTIGATION
32 BY: MARIO C. SCUSSEL

33 UNITED STATES FOOD & DRUG
34 ADMINISTRATION
35 BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

JUNE 21, 2022

2 P R O C E E D I N G S

09:13AM 3 (COURT CONVENED AT 9:13 A.M.)

09:13AM 4 (JURY IN AT 9:13 A.M.)

09:13AM 5 THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU
09:13AM 6 AGAIN FOR YOUR COURTESY.

09:13AM 7 WE'RE BACK ON THE RECORD IN THE BALWANI MATTER. ALL
09:13AM 8 COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT AND OUR JURY IS
09:14AM 9 PRESENT.

09:14AM 10 THANK YOU. GOOD MORNING, LADIES AND GENTLEMEN. IT'S NICE
09:14AM 11 TO SEE YOU AGAIN.

09:14AM 12 LET ME -- BEFORE WE BEGIN THE PROCEEDINGS, LET ME TURN MY
09:14AM 13 ATTENTION TO THE JURY AND ASK YOU AGAIN THAT QUESTION THAT
09:14AM 14 YOU'RE SO FAMILIAR WITH.

09:14AM 15 DURING THE LAST TIME, OR IN BETWEEN THE LAST TIME WE WERE
09:14AM 16 ALL TOGETHER AND YOU WERE OUTSIDE OF THE COURTHOUSE, DID ANY OF
09:14AM 17 YOU HAVE CAUSE OR WERE ANY OF YOU EXPOSED TO ANY MEDIA,
09:14AM 18 WRITINGS, DISCUSSIONS, OR DID ANY OF YOU LEARN ANYTHING ABOUT
09:14AM 19 THIS CASE OTHER THAN WHAT YOU'VE HEARD, SEEN, AND LISTENED TO
09:14AM 20 HERE IN THE COURTROOM?

09:14AM 21 ANYONE HAVE THAT EXPERIENCE? IF SO, IF YOU WOULD PLEASE
09:14AM 22 RAISE YOUR HAND NOW.

09:14AM 23 I SEE NO HANDS.

09:14AM 24 THANK YOU AGAIN FOR YOUR FIDELITY TO THE ADMONITION. IT
09:14AM 25 IS NICE TO SEE YOU AGAIN.

09:14AM 1 LET ME TURN TO THE GOVERNMENT FIRST AND ASK THE

09:15AM 2 GOVERNMENT, DOES THE GOVERNMENT HAVE ANY REBUTTAL?

09:15AM 3 MR. SCHENK: NO, YOUR HONOR, WE DO NOT.

09:15AM 4 THE COURT: ALL RIGHT. THANK YOU.

09:15AM 5 LADIES AND GENTLEMEN, WHAT THIS MEANS IS THAT ALL OF THE
09:15AM 6 EVIDENCE THAT YOU WILL NEED OR THAT THESE LAWYERS HAVE DECIDED
09:15AM 7 TO PUT IN FRONT OF YOU IS NOW IN EVIDENCE.

09:15AM 8 THE NEXT PART OF THE CASE WILL NOW BEGIN, AND THAT IS
09:15AM 9 ARGUMENTS.

09:15AM 10 AND LET ME TURN TO THE GOVERNMENT. DOES THE GOVERNMENT
09:15AM 11 HAVE A CLOSING ARGUMENT?

09:15AM 12 MR. SCHENK: YES, YOUR HONOR, WE DO.

09:15AM 13 THE COURT: PLEASE PROCEED. THANK YOU.

09:15AM 14 MR. SCHENK: YOUR HONOR, MAY I REMOVE MY MASK?

09:15AM 15 THE COURT: YES.

09:15AM 16 MR. SCHENK: THANK YOU.

09:15AM 17 **(MR. SCHENK GAVE HIS CLOSING ARGUMENT ON BEHALF OF THE**
09:15AM 18 **GOVERNMENT.)**

09:15AM 19 MR. SCHENK: GOOD MORNING.

09:15AM 20 SUNNY BALWANI AND ELIZABETH HOLMES AGREED TO COMMIT FRAUD
09:15AM 21 IN THE HOPES THAT THEY WOULD BUY MORE TIME FOR THERANOS. ON
09:16AM 22 SEVERAL OCCASIONS, INCLUDING IN 2009, 2010, AND 2013, THERANOS
09:16AM 23 WAS RUNNING OUT OF MONEY, AND MR. BALWANI HAD A CHOICE TO MAKE.
09:16AM 24 HE COULD WATCH THERANOS FAIL, HE COULD WATCH HIS GIRLFRIEND'S
09:16AM 25 BUSINESS COLLAPSE, OR HE COULD PURSUE A DIFFERENT PATH.

09:16AM 1 MR. BALWANI AT THAT TIME KNEW THAT THERANOS WAS NOT
09:16AM 2 GENERATING AND WOULD NOT GENERATE ANY MEANINGFUL REVENUE BY
09:16AM 3 BEING HONEST WITH PEOPLE. SO HE CHOSE A DIFFERENT PATH.

09:16AM 4 MR. BALWANI KNEW THAT THERE WERE TWO SOURCES OF POSSIBLE
09:16AM 5 REVENUE FOR THERANOS AND, TOGETHER WITH ELIZABETH HOLMES, THEY
09:17AM 6 CAME UP WITH TWO SCHEMES, TWO PLANS TO DEFRAUD THESE GROUPS OF
09:17AM 7 INDIVIDUALS. THEY DECIDED TO DEFRAUD INVESTORS IN THERANOS,
09:17AM 8 AND THEY DECIDED TO DEFRAUD PATIENTS.

09:17AM 9 AND IT'S BECAUSE OF THOSE DECISIONS, IT'S BECAUSE OF THOSE
09:17AM 10 CHOICES THAT SUNNY BALWANI MADE THAT WE'VE BEEN TOGETHER SINCE
09:17AM 11 MARCH.

09:17AM 12 YOU KNOW, BECAUSE YOU'VE SEEN THE EVIDENCE, THAT THERANOS
09:17AM 13 WOULD NOT HAVE GENERATED REVENUE FROM EITHER OF THOSE GROUPS,
09:17AM 14 INVESTORS OR PATIENTS, IF IT WAS HONEST.

09:17AM 15 LET'S IMAGINE FOR A MOMENT WHAT HONEST PITCHES FROM
09:17AM 16 THERANOS, FROM MR. BALWANI, FIRST TO INVESTORS WOULD HAVE
09:17AM 17 SOUNDED LIKE.

09:17AM 18 IF MR. BALWANI WAS HONEST WITH INVESTORS, YOU KNOW THAT HE
09:18AM 19 WOULD HAVE TOLD THEM THAT THERANOS'S TECHNOLOGY WAS NOT
09:18AM 20 VALIDATED BY LARGE PHARMACEUTICAL COMPANIES; THAT THERANOS'S
09:18AM 21 TECHNOLOGY HAD NOT BEEN DEPLOYED BY THE MILITARY IN THE
09:18AM 22 BATTLEFIELD; THAT THERANOS DID NOT HAVE A HEALTHY AND EXPANDING
09:18AM 23 RELATIONSHIP WITH WALGREENS; THAT THERANOS DID NOT HAVE
09:18AM 24 MEANINGFUL REVENUE; THAT THERANOS'S TECHNOLOGY COULD NOT
09:18AM 25 GENERATE ACCURATE AND RELIABLE BLOOD TEST RESULTS.

09:18AM 1 NOW, THE IMPLICATIONS OF BEING HONEST WITH INVESTORS ARE
09:18AM 2 OBVIOUS. YOU KNOW IT. YOU'VE SAT THROUGH THE TRIAL AND HAVE
09:18AM 3 SEEN THE EVIDENCE, AND MR. BALWANI KNEW.

09:18AM 4 THE STATEMENTS, OR THE PITCH, TO PATIENTS WOULD HAVE
09:18AM 5 LIKEWISE RESULTED IN NO REVENUE. IT WOULD HAVE BEEN SIMPLE AND
09:18AM 6 STRAIGHTFORWARD. THERANOS WOULD HAVE TOLD PATIENTS THAT THEY
09:18AM 7 COULD NOT GENERATE ACCURATE AND RELIABLE BLOOD TEST RESULTS,
09:18AM 8 AND THAT, IN FACT, FOR THE MAJORITY OF THE TESTS THAT THERANOS
09:19AM 9 CONDUCTED, THEY NEEDED TO DRAW BLOOD FROM THE VEIN, NOT FROM A
09:19AM 10 FINGERSTICK.

09:19AM 11 AGAIN, IF THEY WERE HONEST WITH INVESTORS AND HONEST WITH
09:19AM 12 PATIENTS, THEY WOULD NOT HAVE GENERATED THE REVENUE THAT
09:19AM 13 MR. BALWANI KNEW THERANOS NEEDED.

09:19AM 14 I'M GOING TO TALK TO YOU FOR A FEW HOURS THIS MORNING, AND
09:19AM 15 MY GOAL IS TO COVER REALLY FOUR TOPICS.

09:19AM 16 AND WE'RE GOING TO GO THROUGH SOME SLIDES THAT I'VE
09:19AM 17 PREPARED, AND THOSE SLIDES ARE GOING TO TOUCH ON, FIRST, THE
09:19AM 18 WITNESSES THAT TESTIFIED IN THE TRIAL.

09:19AM 19 THIS TRIAL, AS I MENTIONED, BEGAN IN MARCH. YOU'VE HEARD
09:19AM 20 FROM A LOT OF WITNESSES THAT THE GOVERNMENT HAS CALLED OVER
09:19AM 21 THOSE MONTHS, AND I WANT TO SPEND A LITTLE BIT OF TIME
09:19AM 22 REMINDING YOU WHO TESTIFIED AND WHERE THEY FIT INTO THE STORY.
09:19AM 23 NOW THAT YOU HAVE SEEN THE FULL STORY, YOU SEE WHERE WITNESSES
09:19AM 24 FIT IN, WHY THEY WERE CALLED AND WHAT PIECE TO THE PUZZLE THEY
09:20AM 25 PROVIDE.

09:20AM 1 AFTER WE COVER THE WITNESSES, WE'RE GOING TO TALK ABOUT
09:20AM 2 THE CRIMES THAT THE GOVERNMENT CHARGED MR. BALWANI WITH
09:20AM 3 COMMITTING. THE GOVERNMENT HAS CHARGED MR. BALWANI WITH
09:20AM 4 COMMITTING CERTAIN CRIMES, AND WE'LL TALK ABOUT WHAT THOSE
09:20AM 5 CRIMES ARE.

09:20AM 6 THIRD, WE'LL TALK ABOUT THE ELEMENTS. EVERY FEDERAL CRIME
09:20AM 7 HAS CERTAIN ELEMENTS THAT THE GOVERNMENT MUST PROVE IN ORDER
09:20AM 8 FOR YOU TO CONVICT, AND WE'LL REVIEW WHAT THOSE ELEMENTS ARE
09:20AM 9 FOR THE SPECIFIC CRIMES.

09:20AM 10 AND FINALLY, WE'LL TALK ABOUT THE EVIDENCE. WHAT EVIDENCE
09:20AM 11 HAVE YOU HEARD THAT WILL SUPPORT EACH OF THOSE ELEMENTS.

09:20AM 12 AND I'LL HAVE A FEW FINAL TOPICS TO DISCUSS WITH YOU
09:20AM 13 BEFORE I SIT DOWN.

09:20AM 14 LET'S BEGIN BY LOOKING AT SOME OF THESE SLIDES.

09:20AM 15 SO AS I MENTIONED, WE'RE GOING TO START BY REVIEWING THE
09:20AM 16 WITNESSES WHO TESTIFIED IN TRIAL.

09:20AM 17 THE FIRST WITNESS THAT THE GOVERNMENT CALLED WAS
09:20AM 18 ERIKA CHEUNG.

09:20AM 19 AND ONE WAY TO THINK OF THE WITNESSES THAT THE GOVERNMENT
09:20AM 20 CALLED IN THIS CASE IS THERANOS INSIDERS, OR FORMER EMPLOYEES,
09:21AM 21 AND EVERYBODY ELSE. THERE WERE A NUMBER OF PEOPLE WHO USED TO
09:21AM 22 WORK AT THERANOS, AND IN LARGE PART, THAT'S WHERE THE TRIAL
09:21AM 23 BEGAN SO THAT YOU COULD SEE WHAT THE REALITY WAS, WHAT HONESTLY
09:21AM 24 WAS OCCURRING AT THERANOS, SO THAT LATER ON IN THE TRIAL WHEN
09:21AM 25 INVESTORS TESTIFIED OR WHEN PATIENTS TESTIFIED AND YOU GOT TO

09:21AM 1 HEAR WHAT THE INVESTORS THOUGHT, YOU ALREADY KNEW THE
09:21AM 2 DIFFERENCE. YOU KNEW THE SIGNIFICANT DELTA BETWEEN WHAT THE
09:21AM 3 INSIDERS, WHAT THE THERANOS EMPLOYEES TOLD YOU WAS OCCURRING AT
09:21AM 4 THERANOS, VERSUS WHAT THE INVESTORS OR THE PATIENTS TOLD YOU
09:21AM 5 THEIR UNDERSTANDING, THEIR EXPECTATIONS, THEIR KNOWLEDGE, WHAT
09:21AM 6 THAT DIFFERENCE WAS.

09:21AM 7 AND MS. CHEUNG WAS THE FIRST WITNESS. AND YOU RECALL THAT
09:21AM 8 ERIKA CHEUNG WORKED AT THERANOS. SHE STARTED AT THERANOS JUST
09:21AM 9 AFTER SHE GRADUATED FROM CAL. SHE WAS EXCITED ABOUT HER JOB.

09:21AM 10 AND ONE OF HER RESPONSIBILITIES AT THERANOS WAS TO PROCESS
09:21AM 11 PATIENT SAMPLES, WAS TO ACTUALLY DO THE BLOOD TESTS. AND
09:22AM 12 MS. CHEUNG TOLD YOU THAT SHE HAD CONCERNS ABOUT THE RESULTS
09:22AM 13 THAT SHE WAS SEEING, THAT SHE DIDN'T THINK THAT THERANOS WAS
09:22AM 14 GENERATING ACCURATE RESULTS, AND YET THEY WERE STILL REPORTING
09:22AM 15 THOSE RESULTS TO PATIENTS.

09:22AM 16 AND SHE TOLD YOU THAT THAT REALLY CONCERNED HER, AND SHE
09:22AM 17 RAISED HER CONCERNS TO OTHER INDIVIDUALS, AND THEN QUIT BECAUSE
09:22AM 18 OF IT.

09:22AM 19 BUT SHE DIDN'T JUST QUIT. WHEN SHE LEFT, SHE ALSO WENT TO
09:22AM 20 THE MEDIA AND SHE WENT TO REGULATORS BECAUSE OF HER CONCERNS.

09:22AM 21 LET ME PAUSE FOR A MOMENT AND JUST SAY ONE THING ABOUT THE
09:22AM 22 SLIDES. WHEN YOU DELIBERATE, YOU WILL NOT HAVE THE SLIDES WITH
09:22AM 23 YOU IN THE DELIBERATION ROOM.

09:22AM 24 IN THE BOTTOM RIGHT CORNER, YOU SEE ON THIS SLIDE I HAVE
09:22AM 25 NOTED CITATIONS TO THE TRANSCRIPTS THAT WERE PRODUCED DURING

09:22AM 1 THE COURSE OF THE TRIAL.

09:22AM 2 YOU ALSO WILL NOT HAVE TRANSCRIPTS OF THE TRIAL, SO YOUR
09:22AM 3 MEMORY OF WHAT THE WITNESSES SAID SHOULD CONTROL.

09:22AM 4 THERE WILL BE INSTANCES ON THE SLIDES WHEN I'M SHOWING YOU
09:22AM 5 EXHIBITS, EMAILS, OR TEXT MESSAGES THAT YOU SAW DURING THE
09:23AM 6 COURSE OF THE TRIAL. YOU WILL HAVE THOSE. AND YOU MAY WANT TO
09:23AM 7 AT TIMES JOT DOWN EXHIBIT NUMBERS THAT YOU SEE ON THE SLIDES IF
09:23AM 8 THERE'S AN EXHIBIT YOU WANT TO GO BACK TO AND LOOK AT DURING
09:23AM 9 YOUR DELIBERATIONS.

09:23AM 10 FOR THIS ERIKA CHEUNG SLIDE, YOU SEE IT'S JUST
09:23AM 11 TRANSCRIPTS.

09:23AM 12 THE NEXT WITNESS THAT TESTIFIED WAS DR. PANDORI. YOU
09:23AM 13 HEARD THAT OVER THE COURSE OF THERANOS'S LIFE IT HAD SEVERAL
09:23AM 14 LAB DIRECTORS, AND EVEN ON OCCASIONS IT HAD EVEN MORE THAN ONE
09:23AM 15 AT THE SAME TIME.

09:23AM 16 AND THAT WAS TRUE WHEN DR. PANDORI WORKED AT THERANOS.
09:23AM 17 DR. ROSENDORFF AND DR. PANDORI WERE CO-LAB DIRECTORS AT
09:23AM 18 THERANOS.

09:23AM 19 AND AT THE TIME WHEN THERANOS WENT LIVE WITH PATIENT
09:23AM 20 TESTING AT WALGREENS, YOU HEARD THAT DR. ROSENDORFF'S NAME WAS
09:23AM 21 ON WHAT WAS CALLED THE CLIA LICENSE, THE CERTIFICATE THAT GAVE
09:23AM 22 THERANOS THE ABILITY TO TEST BLOOD, AND WHILE DR. ROSENDORFF'S
09:24AM 23 NAME WAS ON THAT CERTIFICATE AND, THEREFORE, MANY PEOPLE CALLED
09:24AM 24 HIM LAB DIRECTOR, HE ACTUALLY SHARED THE TITLE AND SOME OF THE
09:24AM 25 RESPONSIBILITIES WITH DR. PANDORI.

09:24AM 1 DR. PANDORI TALKED TO YOU ABOUT HIS CONCERNS WHEN HE
09:24AM 2 WORKED AT THERANOS AND ABOUT RAISING THOSE CONCERNS REGARDING
09:24AM 3 THE ACCURACY AND RELIABILITY OF BLOOD TESTING.

09:24AM 4 YOU MAY RECALL THAT DR. PANDORI QUIT. MANY THERANOS
09:24AM 5 EMPLOYEES QUIT. ERIKA CHEUNG DID. DR. PANDORI DID.
09:24AM 6 DR. ROSENDORFF DID.

09:24AM 7 AND WHEN DR. PANDORI QUIT, HE TOLD YOU HE PREPARED A
09:24AM 8 TRANSITION MEMO, A MEMO SO THAT THOSE WHO INHERITED HIS JOB
09:24AM 9 RESPONSIBILITIES COULD PICK UP ON THE WORK THAT HE HAD DONE,
09:24AM 10 AND THERE WAS AN ARGUMENT OR A DEBATE THROUGH WITNESS
09:24AM 11 QUESTIONING THAT OCCURRED HERE IN THE COURTROOM ABOUT THE
09:24AM 12 CONTENT OF THAT TRANSITION MEMO.

09:24AM 13 AND THROUGH QUESTIONING, THE DEFENSE WAS ELICITING THIS
09:24AM 14 POINT FROM DR. PANDORI, THAT IN HIS TRANSITION MEMO HE DIDN'T
09:25AM 15 WRITE HIS CONCERNS. HE DIDN'T WRITE DOWN IN THE TRANSITION
09:25AM 16 MEMO THAT HE THOUGHT THAT THERE WERE PROBLEMS WITH THERANOS'S
09:25AM 17 TESTING DEVICE CALLED THE EDISON.

09:25AM 18 AND I WANT TO REMIND YOU WHAT DR. PANDORI SAID ABOUT THAT
09:25AM 19 POINT, WHY IT WAS MISSING FROM HIS TRANSITION MEMO.

09:25AM 20 WHAT HE TOLD YOU WAS THAT HE HAD RAISED THOSE CONCERNS.
09:25AM 21 HE RAISED THEM DIRECTLY TO MR. BALWANI. THEY WERE NOT WELL
09:25AM 22 RECEIVED. AND HE SAID TO PUT THOSE AGAIN IN THE TRANSITION
09:25AM 23 MEMO WAS AKIN TO HITTING YOUR HEAD AGAINST THE WALL. THERE WAS
09:25AM 24 NO NEED TO WRITE SOMETHING IN THE MEMO SOMETHING THAT HE HAD
09:25AM 25 ALREADY RAISED DIRECTLY WITH THE PRESIDENT OF THE COMPANY AND

09:25AM 1 HE KNEW THERE WAS NO APPETITE AT THERANOS TO STOP TESTING ON
09:25AM 2 THE EDISON DEVICE.

09:25AM 3 THE NEXT WITNESS THAT TESTIFIED WAS SO HAN SPIVEY. YOU
09:25AM 4 MAY RECALL WHEN SHE WORKED AT THERANOS, SHE WENT BY THE NAME OF
09:25AM 5 DANISE YAM. AND MS. YAM WAS THE CONTROLLER AT THERANOS.

09:25AM 6 SO WE'RE STILL IN THIS WORLD OF FORMER EMPLOYEES WHO ARE
09:26AM 7 ON THE STAND EXPLAINING TO YOU WHAT THE REALITY AT THERANOS
09:26AM 8 WAS.

09:26AM 9 AND WHAT MS. SPIVEY TOLD YOU WAS THAT THERANOS WAS NOT
09:26AM 10 GENERATING MUCH REVENUE, THAT THAT WAS SOMETHING THAT WAS
09:26AM 11 TRACKED AT THERANOS. SHE GATHERED THAT DATA, SHE SHARED THAT
09:26AM 12 DATA WITH MR. BALWANI, AND SHE WAS SHARING THAT INFORMATION AT
09:26AM 13 MR. BALWANI'S REQUEST.

09:26AM 14 YOU MAY RECALL THAT WHEN SHE WAS ON THE STAND, SHE WAS
09:26AM 15 SHOWN THIS DOCUMENT. ON THE LEFT SIDE OF YOUR SCREEN IS
09:26AM 16 EXHIBIT 4859. SHE SAID SHE DID NOT PREPARE THIS DOCUMENT.

09:26AM 17 LATER ON IN THE TRIAL YOU LEARNED WHAT THIS DOCUMENT
09:26AM 18 ACTUALLY WAS. LISA PETERSON, AN INVESTOR, GOT ON THE STAND AND
09:26AM 19 TOLD YOU THAT SHE RECEIVED THIS DOCUMENT FROM THERANOS, AND
09:26AM 20 THAT'S HER HANDWRITING ON THE DOCUMENT.

09:26AM 21 AND YOU MAY RECALL, SHE RECEIVED THIS DOCUMENT IN AND
09:26AM 22 AROUND OCTOBER OF 2014. AND IN OCTOBER OF 2014, MR. BALWANI
09:27AM 23 AND MS. HOLMES TOLD LISA PETERSON AND THE OTHER INVESTORS FROM
09:27AM 24 RDV THAT THEY EXPECTED TO HAVE \$140 MILLION IN REVENUE BY THE
09:27AM 25 END OF THAT YEAR.

09:27AM 1 THEY EXPECTED BY THE END OF NEXT YEAR, 2015, TO HAVE
09:27AM 2 NEARLY \$1 BILLION IN REVENUE, JUST UNDER \$990 MILLION.

09:27AM 3 AND WHAT MS. SPIVEY TOLD YOU WAS THAT SHE DIDN'T PREPARE
09:27AM 4 THIS DOCUMENT, AND THOSE NUMBERS NEVER MATERIALIZED. THERANOS
09:27AM 5 NEVER HAD REVENUE THAT APPROACHED EITHER OF THOSE NUMBERS.

09:27AM 6 DR. CULLEN WAS THE NEXT WITNESS WHO TESTIFIED. DR. CULLEN
09:27AM 7 WAS THE FIRST WITNESS WHO SPOKE TO YOU WHO DID NOT WORK AT
09:27AM 8 THERANOS. DR. CULLEN WORKED FOR A PHARMACEUTICAL COMPANY
09:27AM 9 CALLED SCHERING-PLOUGH.

09:27AM 10 AND YOU MAY RECALL THAT THERANOS TOLD INVESTORS THAT ITS
09:27AM 11 TECHNOLOGY HAD BEEN VALIDATED THROUGH ITS WORK WITH LARGE
09:27AM 12 PHARMACEUTICAL COMPANIES.

09:28AM 13 REPRESENTATIVES FROM TWO OF THOSE PHARMACEUTICAL COMPANIES
09:28AM 14 CAME HERE TO COURT TO TALK TO YOU ABOUT THE REALITY, THE TRUTH
09:28AM 15 OF THE RELATIONSHIP BETWEEN THERANOS AND SCHERING-PLOUGH, AND
09:28AM 16 DR. CULLEN IN HER TESTIMONY, AND LATER ON A GENTLEMAN NAMED
09:28AM 17 DR. WEBER FROM PFIZER CAME AND TESTIFIED TO YOU.

09:28AM 18 I WANT TO REMIND YOU THAT THERE ARE ESSENTIALLY THREE
09:28AM 19 POINTS THAT DR. CULLEN MADE ON THE STAND. SHE TOLD YOU THAT
09:28AM 20 THERANOS AND SCHERING-PLOUGH DID NOT DO FURTHER WORK.
09:28AM 21 REMEMBER, SHE SAID SHE FLEW TO PALO ALTO, HAD A MEETING IN
09:28AM 22 PALO ALTO WHERE THEY WERE DISCUSSING SOME OF THE WORK THAT WAS
09:28AM 23 DONE, AND SHE FOUND SOME OF THE ANSWERS THAT THERANOS PROVIDED
09:28AM 24 LACKING.

09:28AM 25 SHE DIRECTED QUESTIONS AT INDIVIDUALS AROUND THE TABLE,

09:28AM 1 AND SHE WAS CONCERNED ABOUT THE TRANSPARENCY OF THE ANSWERS
09:28AM 2 THAT SHE WAS RECEIVING, AND THAT FROM HER PERSPECTIVE THERE
09:28AM 3 WASN'T AN INTEREST IN SCHERING-PLOUGH'S PART TO DO ANY FURTHER
09:29AM 4 WORK WITH THERANOS.

09:29AM 5 SHE TOLD YOU THAT SCHERING-PLOUGH DID NOT GIVE THERANOS
09:29AM 6 PERMISSION TO USE THE SCHERING-PLOUGH LOGO ON A DOCUMENT.

09:29AM 7 YOU'VE SEEN THIS DOCUMENT A FEW TIMES, AND WE'LL TALK
09:29AM 8 ABOUT IT LATER THIS MORNING, A DOCUMENT THAT SUGGESTED TO
09:29AM 9 INVESTORS THAT SCHERING-PLOUGH HAD VALIDATED THERANOS'S
09:29AM 10 TECHNOLOGY.

09:29AM 11 WELL, DR. CULLEN TOLD YOU SHE WAS THE POINT PERSON FOR
09:29AM 12 THIS WORK, AND SHE DID NOT AUTHORIZE THE USE OF THE
09:29AM 13 SCHERING-PLOUGH LOGO.

09:29AM 14 AND FINALLY, SHE TOLD YOU THAT SCHERING-PLOUGH DID NOT
09:29AM 15 VALIDATE THERANOS'S TECHNOLOGY.

09:29AM 16 THE NEXT WITNESS THAT TESTIFIED WAS DAN EDLIN. YOU MAY
09:29AM 17 RECALL THAT MR. EDLIN WORE -- HE WAS ANOTHER INSIDER. HE
09:29AM 18 WORKED AT THERANOS. HE WORE SEVERAL HATS AT THERANOS. AND
09:29AM 19 WHERE HE PHYSICALLY SAT AT THERANOS GAVE HIM HELPFUL
09:29AM 20 PERSPECTIVE IN THIS TRIAL BECAUSE HE SAT JUST OUTSIDE OF BOTH
09:29AM 21 MS. HOLMES AND MR. BALWANI'S OFFICES. SO HE HAD THE
09:30AM 22 OPPORTUNITY TO COME AND TESTIFY TO YOU ABOUT WHAT HE OBSERVED
09:30AM 23 IN THEIR WORKING RELATIONSHIP.

09:30AM 24 HE ALSO TALKED TO YOU ABOUT JOB RESPONSIBILITIES, SORT OF
09:30AM 25 WHO DID WHAT AT THERANOS, AND HOW HOLMES AND BALWANI DIVIDED UP

09:30AM 1 WORK, BUT HE COULD, BECAUSE OF HIS, HIS PHYSICAL DESK, HE COULD
09:30AM 2 TELL YOU HOW THEY INTERACTED TOGETHER, WHETHER IT SEEMED THAT
09:30AM 3 THEY DISAGREED OR WHETHER THEY SPOKE WITH ONE VOICE. AND HE
09:30AM 4 ALSO DESCRIBED TO YOU WHAT HE OBSERVED IN THAT RELATIONSHIP.

09:30AM 5 BUT HERE I'M HIGHLIGHTING FOR YOU WHAT HE TOLD YOU ABOUT
09:30AM 6 WHY HE LEFT THERANOS. HE TOLD YOU THAT PART OF IT WAS A
09:30AM 7 PERSONAL REASON, HE WAS GOING TO GRAD SCHOOL. BUT PART IT WAS
09:30AM 8 AFTER A NEGATIVE "WALL STREET JOURNAL" ARTICLE.

09:30AM 9 SO DURING THE COURSE OF THIS TRIAL, YOU'VE HEARD ABOUT A
09:30AM 10 FEW NEWSPAPER ARTICLES OR MAGAZINE ARTICLES, AND YOU'VE HEARD
09:30AM 11 ABOUT ESSENTIALLY TWO FROM "THE WALL STREET JOURNAL." THERE
09:30AM 12 WAS ONE IN SEPTEMBER OF 2013 THAT WAS PUBLISHED TO BE RELEASED
09:30AM 13 SIMULTANEOUS TO THE PUBLIC LAUNCH WHEN THERANOS BEGAN TESTING
09:31AM 14 PATIENT BLOOD AT WALGREENS, AND THAT SEPTEMBER 2013 ARTICLE WAS
09:31AM 15 POSITIVE.

09:31AM 16 YOU ALSO HEARD ABOUT A 2015, OCTOBER 2015 ARTICLE FROM
09:31AM 17 "THE WALL STREET JOURNAL," THE ONE THAT HAS BEEN MENTIONED, YOU
09:31AM 18 HEARD IT CALLED THE NEGATIVE, "WALL STREET JOURNAL" ARTICLE.

09:31AM 19 AND WHAT MR. EDLIN TOLD YOU IS AFTER THAT ARTICLE WAS
09:31AM 20 PUBLISHED, THERANOS HAD OPPORTUNITIES TO DISPROVE SOME OF THE
09:31AM 21 CLAIMS TO SHOW ITS TECHNOLOGY WORKING, AND HE WAITED AROUND FOR
09:31AM 22 A WHILE. HE DIDN'T LEAVE IN OCTOBER OF 2015.

09:31AM 23 BUT WHEN THEY JUST KEPT FALLING ON THEIR FACE, WHEN THEY
09:31AM 24 JUST COULDN'T, IN HIS WORDS AND HIS MIND, RESPOND TO THE
09:31AM 25 CLAIMS, HE DECIDED HE DIDN'T WANT TO BE A PART OF THE COMPANY

1 ANYMORE. SO ONE MORE WITNESS THAT CAME IN AND TESTIFIED,
2 FORMER EMPLOYEE WHO QUIT BECAUSE OF THEIR CONCERNS AT THERANOS.

3 THE NEXT WITNESS WHO TESTIFIED WAS NIMESH JHAVERI. YOU
4 MAY REMEMBER THAT MR. JHAVERI WORKED AT WALGREENS. AND HIS JOB
5 WAS TO, IN HIS WORDS, OPERATIONALIZE THE LAUNCH.

6 AS I MENTIONED, IN SEPTEMBER OF 2013, THERANOS BEGAN
7 TESTING PATIENTS IN WALGREENS STORES, 1 IN PALO ALTO AND A
8 MAXIMUM OF 40, THEY EVENTUALLY OPENED 40 STORES IN THE PHOENIX
9 MARKET.

10 AND MR. JHAVERI WAS THE POINT PERSON AT WALGREENS TO
11 OBSERVE AND HELP DEVELOP AND LAUNCH OF WALGREENS-THERANOS
12 STORES.

13 AND MR. JHAVERI TOLD YOU THAT HE HAD A POINT PERSON AT
14 THERANOS, AND HIS POINT PERSON WAS MR. BALWANI. AND THE TWO OF
15 THEM TALKED OFTEN. THEY EVEN HAD REGULARLY SCHEDULED MEETINGS
16 TO DISCUSS HOW THE ROLLOUT, HOW THE LAUNCH WAS GOING.

17 AND THERE'S BEEN AN ISSUE THAT WE'LL COVER IN SOME DETAIL
18 TODAY, THIS IDEA OF WHETHER THERANOS WAS GOING TO GO NATIONAL
19 WITH WALGREENS OR WHETHER IT WAS CONTINGENT UPON SUCCESS IN THE
20 PILOT.

21 MR. JHAVERI TOLD YOU THAT A NATIONAL ROLLOUT WAS NEVER
22 GUARANTEED. THAT WHAT MATTERED WAS SUCCESS IN THE PILOT. AND
23 YOU MAY REMEMBER THAT MR. JHAVERI SHOWED YOU SOME SLIDES THAT
24 WERE DISCUSSED DURING THERANOS-WALGREENS MEETINGS THAT TRACKED
25 CERTAIN METRICS THAT MATTERED TO WALGREENS, LIKE THE PERCENT OF

09:33AM 1 VENOUS DRAWS, AND THAT NUMBER NEVER GOT TO A POINT THAT
09:33AM 2 WALGREENS WAS SATISFIED.

09:33AM 3 AND MR. JHAVERI TOLD YOU, AND YOU EVEN SAW MR. JHAVERI'S
09:33AM 4 COMMUNICATIONS DIRECTLY TO MR. BALWANI, EXPRESSING CONCERNS
09:33AM 5 ABOUT THE VENOUS DRAW NUMBERS AND WHETHER THEY WOULD EVER
09:33AM 6 EXPAND BEYOND ARIZONA IF THE VENOUS DRAW REMAINED WHERE IT WAS,
09:33AM 7 AROUND 40 PERCENT.

09:33AM 8 AND ONE REASON THAT IS IMPORTANT IS BECAUSE WHEN
09:34AM 9 MR. BALWANI COMMUNICATES FINANCIAL PROJECTIONS TO INVESTORS,
09:34AM 10 AND THESE ARE ASTRONOMICAL NUMBERS, A HUNDRED MILLION OR A
09:34AM 11 BILLION, THEY'RE CONTINGENT UPON THE NUMBER OF WALGREENS
09:34AM 12 STORES.

09:34AM 13 AND YOU REMEMBER LISA PETERSON'S HANDWRITING ON THAT
09:34AM 14 DOCUMENT THAT WE JUST LOOKED AT, 900 STORES. SO WE'RE GOING TO
09:34AM 15 COVER THIS A LITTLE BIT MORE LATER, BUT MR. BALWANI IS TELLING
09:34AM 16 INVESTORS IT'S REASONABLE TO THINK IN 2015 WE MIGHT HAVE 900
09:34AM 17 WALGREENS LOCATIONS, AND IF WE DO, WE'LL HAVE A BILLION DOLLARS
09:34AM 18 IN REVENUE, WHEN THAT'S CONTRARY TO WHAT MR. JHAVERI IS TELLING
09:34AM 19 HIM.

09:34AM 20 THERE'S ONE MORE POINT I'M GOING TO MAKE ON THAT, AND,
09:34AM 21 THAT IS, MR. BALWANI DOESN'T NEED TO HEAR IT FROM WALGREENS.
09:34AM 22 WHEN YOU HAVE SEEN INTERNAL WALGREENS DOCUMENTS EXPRESSING
09:34AM 23 OPTIMISM ABOUT GOING NATIONAL, OR YOU HEAR NUMBERS FROM
09:34AM 24 WALGREENS REDUCING THE NUMBER OF STORES THROUGHOUT THE COUNTRY
09:35AM 25 THAT THEY ANTICIPATE GOING TO, THAT'S ONE WAY THAT MR. BALWANI

09:35AM 1 KNOWS IT'S UNLIKELY THAT THEY WILL GO NATIONAL WITH WALGREENS,
09:35AM 2 BUT THAT'S NOT THE ONLY WAY.

09:35AM 3 MR. BALWANI KNOWS THAT THE STATEMENTS THAT WERE MADE TO
09:35AM 4 WALGREENS TO GET THEM TO SIGN UP TO PARTNER UP WERE FRAUDULENT,
09:35AM 5 AND IT'S ONLY A MATTER OF TIME BEFORE WALGREENS DISCOVERS THAT
09:35AM 6 THERANOS CAN'T TEST ON FINGERSTICK TO THE EXTENT THAT THERANOS
09:35AM 7 REPRESENTED.

09:35AM 8 SO MR. BALWANI DOESN'T HAVE TO HEAR IT FROM WALGREENS TO
09:35AM 9 KNOW HIS FINANCIAL PROJECTIONS ARE WRONG. HE KNOWS HE DUPED
09:35AM 10 WALGREENS INTO THE BUSINESS RELATIONSHIP, AND IT IS ONLY A
09:35AM 11 MATTER OF TIME BEFORE THAT HOUSE OF CARDS CRUMBLES AND THE
09:35AM 12 FINANCIAL PROJECTIONS NEVER BECOME TRUE.

09:35AM 13 THE NEXT WITNESS THAT TESTIFIED WAS DR. ROSENDORFF. YOU
09:35AM 14 KNOW THAT HE WAS THE LAB DIRECTOR DURING THIS CRUCIAL ROUGHLY
09:35AM 15 YEAR FROM THE -- JUST IN ADVANCE OF THE LAUNCH WITH WALGREENS
09:35AM 16 THROUGH THAT FIRST YEAR WITH WALGREENS.

09:36AM 17 AND DR. ROSENDORFF TALKED TO YOU ABOUT THE DIFFERENCE
09:36AM 18 BETWEEN WHAT A LAB DIRECTOR IS SUPPOSED TO HAVE THE POWER TO DO
09:36AM 19 AND WHAT AT THERANOS HE COULD DO.

09:36AM 20 ORDINARILY, DR. ROSENDORFF TOLD YOU, THAT HIS
09:36AM 21 UNDERSTANDING IS THE BUCK STOPS WITH THE LAB DIRECTOR, THAT
09:36AM 22 THEY HAVE THE POWER TO MAKE MOST OF, IF NOT ALL, OF THE
09:36AM 23 DECISIONS IN THE LAB.

09:36AM 24 BUT ONE OF THE THINGS THAT FRUSTRATED HIM MORE THAN
09:36AM 25 ANYTHING WORKING AT THERANOS, WAS THAT THAT SIMPLY WASN'T TRUE.

09:36AM 1 THAT AT THERANOS, MR. BALWANI WAS MAKING THE DECISIONS IN THE
09:36AM 2 LAB. THAT DR. ROSENDORFF DIDN'T DO THE HIRING OR THE FIRING;
09:36AM 3 DR. ROSENDORFF WAS LEFT OFF OF EMAILS; DR. ROSENDORFF HAD
09:36AM 4 TROUBLE EVEN DECIDING WHICH DEVICES THEY WOULD USE TO RUN
09:36AM 5 CERTAIN TESTS. AND THAT FRUSTRATION, THE FACT THAT HE COULD
09:36AM 6 SEE PROBLEMS IN THE LAB BUT DIDN'T HAVE THE POWER TO FIX THEM,
09:36AM 7 CAUSED HIM ALSO TO QUIT.

09:37AM 8 THE NEXT WITNESS WAS LISA PETERSON. SHE WAS THE FIRST OF
09:37AM 9 THE VICTIM INVESTORS THAT CAME AND TESTIFIED. AND YOU MAY
09:37AM 10 REMEMBER THAT SHE WORKED FOR A FAMILY OFFICE CALLED RDV.

09:37AM 11 MS. PETERSON GOT ON THE STAND AND THEN AGAIN SAW THIS
09:37AM 12 DOCUMENT, EXHIBIT 1853. SHE TOLD YOU THIS IS HER HANDWRITING
09:37AM 13 ON THE DOCUMENT. AND SHE TOLD YOU THAT SHE RECEIVED A BINDER
09:37AM 14 OF DOCUMENTS BEFORE RDV INVESTED, AND SHE ALSO HAD IN-PERSON
09:37AM 15 MEETINGS AT THERANOS.

09:37AM 16 AND PART OF THE THINGS THAT SHE WAS TOLD THAT SHE RELIED
09:37AM 17 UPON IN MAKING AN INVESTMENT DECISION WAS FUTURE REVENUE, HOW
09:37AM 18 MUCH MONEY THERANOS EXPECTED TO GENERATE. AND SHE RECEIVED
09:37AM 19 THIS DOCUMENT IN OCTOBER OF 2015 -- I'M SORRY, 2014.

09:37AM 20 WITH NINE OR TEN MONTHS OF A YEAR COMPLETE, SHE'S TOLD BY
09:38AM 21 MR. BALWANI THAT IN 2014, THERANOS EXPECTS TO HAVE \$140 MILLION
09:38AM 22 OF REVENUE, AND IN THE NEXT YEAR, IN 2015, THEY EXPECT TO HAVE
09:38AM 23 A BILLION DOLLARS IN REVENUE.

09:38AM 24 YOU CAN ALSO NOTICE IN ADDITION TO THE 900 LOCATIONS, SHE
09:38AM 25 WROTE, THAT FIRST SET OF NUMBERS UNDER 2015, SOME ARE CROSSED

09:38AM 1 OUT, AND SHE WROTE IN REVISED NUMBERS. SO THIS ISN'T A
09:38AM 2 DOCUMENT THAT MR. BALWANI SHARED WITH HER AND THEN IGNORED BUT
09:38AM 3 WAS BURIED IN A BINDER OF MATERIAL.

09:38AM 4 MR. BALWANI AND LISA PETERSON TOOK THE TIME TO GO THROUGH
09:38AM 5 THEM AND ACTUALLY REVISE IN SMALL AMOUNTS, BUT TO REVISE SOME
09:38AM 6 OF THE NUMBERS. THERE'S AN IN-PERSON DOUBLING DOWN ON THESE
09:38AM 7 NUMBERS.

09:38AM 8 THE NEXT WITNESS WHO TESTIFIED WAS DR. DHAWAN. YOU HEARD
09:38AM 9 THAT DR. DHAWAN WAS MR. BALWANI'S DERMATOLOGIST.

09:39AM 10 WHEN ADAM ROSENDORFF QUIT AND LEFT THERANOS, THERANOS
09:39AM 11 NEEDED A LAB DIRECTOR, AND MR. BALWANI TOOK THE TIME TO HIRE
09:39AM 12 THAT PERSON. MR. BALWANI HIRED HIS DERMATOLOGIST TO RUN THE
09:39AM 13 LAB AT THERANOS.

09:39AM 14 AND WHAT YOU MAY HAVE FOUND SURPRISING DURING DR. DHAWAN'S
09:39AM 15 TESTIMONY WAS THAT IT'S POSSIBLE THE ENTIRE TIME DR. DHAWAN
09:39AM 16 WORKED THERE HE SPENT LESS TIME WORKING ON THERANOS THAN
09:39AM 17 ADAM ROSENDORFF DID IN ONE DAY.

09:39AM 18 WHEN DR. DHAWAN WORKED AT THERANOS, HE SPENT A FEW HOURS
09:39AM 19 TOTAL ON THERANOS. HE VISITED THE LAB ONE OR TWO TIMES. HE
09:39AM 20 WENT IN ON A SATURDAY AND SIGNED A STACK OF DOCUMENTS.

09:39AM 21 BUT THE LIST OF THINGS HE DID NOT DO IS A MILE LONG. HE
09:39AM 22 NEVER COMMUNICATED WITH A DOCTOR OR A PATIENT. HE NEVER
09:39AM 23 REVIEWED A LAB TEST. HE NEVER REPORTED A CRITICAL VALUE. THE
09:40AM 24 LIST GOES ON AND ON OF THINGS THAT MR. BALWANI'S LAB DIRECTOR
09:40AM 25 DID NOT DO AT THERANOS.

THE NEXT WITNESS WHO TESTIFIED WAS PAT MENDENHALL.

MR. MENDENHALL WAS ALSO AN INVESTOR. ONE OF THE IMPORTANT THINGS TO TAKE FROM HIS TESTIMONY IS A PHONE CALL THAT MR. MENDENHALL HAD WITH MR. BALWANI. THAT PHONE CALL, YOU CAN TELL FROM THIS EMAIL, WAS ON SUNDAY, DECEMBER 22, 2013.

WE'LL GET TO THIS A LITTLE BIT LATER, BUT THERE'S SPECIFIC INSTANCES OF INVESTMENTS THAT ARE CHARGED IN THIS CASE, ELECTRONIC FUNDS TRANSFERS, WIRES OF MONEY TO INVEST IN THERANOS. THIS PHONE CALL IS BEFORE ALL OF THEM BY A WEEK OR SO.

ON THE PHONE, MR. BALWANI AND MR. MENDENHALL ARE DISCUSSING THERANOS OR DISCUSSING THIS INVESTMENT OPPORTUNITY FOR MR. MENDENHALL. AND A LITTLE BIT LATER I'M GOING TO SHOW YOU THE EMAIL. YOU MAY RECALL THE EMAIL SUMMARIZES WHAT BALWANI TOLD MENDENHALL, BUT AS A PREVIEW, I'M GOING TO REMIND YOU OF A QUESTION AND ANSWER THAT OCCURRED WITH MR. MENDENHALL WHEN HE WAS ON THE STAND, BECAUSE YOU'LL SEE IN THE EMAIL, THE SENTENCES ARE SORT OF TERSE, THEY'RE SHORT, THEY'RE DIRECT.

SO MR. MENDENHALL WAS ASKED, IS THAT YOUR WRITING STYLE? ARE YOU SORT OF BEING EFFICIENT WITH WORDS AND JUST SUMMARIZING WHAT MR. BALWANI SAID OR IS THAT ACTUALLY WHAT HE SAID?

AND MR. MENDENHALL SAID, NO, HE WAS 100 PERCENT CONFIDENT, FACTUAL, PRECISE.

SO AGAIN, LATER WHEN WE GET TO THOSE SPECIFIC STATEMENTS, KNOW THAT MR. MENDENHALL WAS ACTUALLY ASKED, BEFORE WE GET INTO

09:41AM 1 THE CONTENT OF THESE STATEMENTS, LET ME JUST MAKE SURE I
09:41AM 2 UNDERSTAND YOUR WRITING STYLE VERSUS BALWANI'S SPEAKING STYLE
09:41AM 3 AND WHICH ONE IS BEING CAPTURED IN YOUR EMAIL, AND
09:42AM 4 MR. MENDENHALL CLARIFIED FOR YOU.

09:42AM 5 THE NEXT WITNESS WHO TESTIFIED WAS BRYAN TOLBERT. YOU MAY
09:42AM 6 REMEMBER THAT MR. TOLBERT WORKED FOR THE HALL INVESTMENT GROUP,
09:42AM 7 ANOTHER INVESTOR. AND MR. TOLBERT TOLD YOU THAT HE THINKS HE
09:42AM 8 MAY HAVE NEVER IN HIS LIFE SEEN MR. BALWANI. HE DIDN'T SPEAK
09:42AM 9 TO HIM BEFORE INVESTING, HE DIDN'T COMMUNICATE WITH HIM BEFORE
09:42AM 10 INVESTING. AND HE DID TALK TO ELIZABETH HOLMES ON THE PHONE
09:42AM 11 DURING A CONFERENCE CALL. AND HE DESCRIBED TO YOU SOME OF WHAT
09:42AM 12 HE LEARNED ON THAT CALL, AND WHAT I'VE HIGHLIGHTED HERE FOR YOU
09:42AM 13 ARE STATEMENTS ABOUT MILITARY WORK.

09:42AM 14 ELIZABETH HOLMES TOLD BRYAN TOLBERT THAT THE THERANOS
09:42AM 15 DEVICE HAD BEEN DEPLOYED BY THE MILITARY AND WAS BEING USED IN
09:42AM 16 THE TREATMENT OF SOLDIERS.

09:42AM 17 LATER WE'LL COVER THIS IDEA HOW MR. BALWANI CAN BE
09:42AM 18 RESPONSIBLE FOR AN INVESTMENT BY SOMEONE HE NEVER SPOKE TO. I
09:42AM 19 GET THAT THAT'S A QUESTION, AND WE'RE GOING TO COVER THAT
09:43AM 20 DIRECTLY. BUT FOR NOW, I WANT TO REMIND YOU OF THIS MILITARY
09:43AM 21 TESTIMONY, INVESTORS LIKE MR. TOLBERT HEARD FALSE STATEMENTS
09:43AM 22 ABOUT WHAT THERANOS HAD DONE WITH THE DOD, AND MR. TOLBERT
09:43AM 23 HEARD THAT ON A PHONE CALL WITH ELIZABETH HOLMES.

09:43AM 24 THE NEXT WITNESS WHO TESTIFIED WAS DR. WEBER. AS I
09:43AM 25 MENTIONED, DR. WEBER WORKED AT PFIZER. SO DR. WEBER SORT OF

09:43AM 1 PROVIDED FURTHER TESTIMONY SORT OF TO WHAT DR. CULLEN DID. AND
09:43AM 2 DR. WEBER TOLD YOU SORT OF THE SAME THINGS, THAT PFIZER DIDN'T
09:43AM 3 AUTHORIZE THE USE OF THE THERANOS LOGO ON A THERANOS CREATED
09:43AM 4 DOCUMENT; PFIZER'S WORK WITH THERANOS ENDED, AT LEAST TO
09:43AM 5 DR. WEBER'S KNOWLEDGE, AFTER THE WORK THAT WEBER WAS INVOLVED
09:43AM 6 IN; AND, FINALLY, DR. WEBER TOLD YOU THAT THERANOS -- I'M
09:43AM 7 SORRY, THAT PFIZER DID NOT VALIDATE THERANOS'S TECHNOLOGY.

09:44AM 8 THE NEXT WITNESS WHO TESTIFIED WAS SARAH BENNETT. YOU
09:44AM 9 HAVE HEARD IN THIS TRIAL THAT THERE'S AN AGENCY IN THE FEDERAL
09:44AM 10 GOVERNMENT CALLED HHS, HEALTH AND HUMAN SERVICES. AND WITHIN
09:44AM 11 THAT AGENCY, WITHIN THAT DEPARTMENT THAT THERE ARE TWO AGENCIES
09:44AM 12 THAT YOU'VE HEARD ABOUT, THE FDA AND CMS. CMS IS THE CENTER
09:44AM 13 FOR MEDICARE AND MEDICAID SERVICES.

09:44AM 14 AND PART OF CMS'S RESPONSIBILITY IS TO REGULATE THE LAB
09:44AM 15 INDUSTRY. AND MS. BENNETT WORKS FOR THAT PART OF CMS. AND SHE
09:44AM 16 WAS INVOLVED IN A SURVEY AT THERANOS. SO SHE TRAVELLED TO
09:44AM 17 THERANOS AND REVIEWED DOCUMENTS AND INTERVIEWED WITNESSES.

09:44AM 18 AND SHE TALKED TO YOU ABOUT WHAT SHE LEARNED THROUGH THE
09:44AM 19 COURSE OF THAT SURVEY. AND SHE TOLD YOU SEVERAL THINGS ABOUT
09:44AM 20 HER INTERACTIONS THAT SHE FOUND INTERESTING AT THE SURVEY, AND
09:45AM 21 SOME OF THEM WAS THE SURVEY THAT SHE FELT WAS OCCURRING, AND
09:45AM 22 SHE ASKED FOR DOCUMENTS AND SOMETIMES IT WOULD TAKE A WHILE AND
09:45AM 23 SOMETIMES THEY WOULD BRING BACK THE WRONG DOCUMENTS.

09:45AM 24 SHE ALSO TOLD YOU THAT THERE WERE MORE LAWYERS INVOLVED
09:45AM 25 THAT WERE USEFUL, THAT MR. BALWANI WAS LEADING THE SURVEY, AND

09:45AM 1 THAT HE WAS DEMANDING END-OF-THE DAY SUMMARIES. AT THE END OF
09:45AM 2 EACH DAY HE WANTED TO KNOW WHAT BENNETT WAS FINDING, AND THAT
09:45AM 3 THERE EVEN CAME A POINT IN TIME WHEN SHE WAS GOING TO MAKE
09:45AM 4 CERTAIN FINDINGS, AND MR. BALWANI TRIED TO DISCOURAGE HER FROM
09:45AM 5 MAKING THOSE FINDINGS.

09:45AM 6 SO MS. BENNETT TOLD YOU ABOUT WHAT WAS LEARNED DURING THE
09:45AM 7 COURSE OF THAT CMS SURVEY.

09:45AM 8 THE NEXT WITNESS WHO TESTIFIED WAS DAN MOSLEY. YOU MAY
09:45AM 9 RECALL MR. MOSLEY WAS A LAWYER IN NEW YORK AND AN INVESTOR IN
09:45AM 10 THERANOS.

09:45AM 11 MR. MOSLEY HAD AS A CLIENT OF HIS DR. HENRY KISSINGER.
09:46AM 12 AND YOU MAY REMEMBER DR. KISSINGER ASKED MR. MOSLEY TO SHARE
09:46AM 13 HIS OPINION ON THERANOS, TO REVIEW SOME DOCUMENTS AND PROVIDE
09:46AM 14 THAT TO DR. KISSINGER.

09:46AM 15 SO THAT'S WHAT MR. MOSLEY DID. HE RECEIVED WHAT WE ARE
09:46AM 16 CALLING INVESTOR BINDERS, STACKS OF DOCUMENTS FROM THERANOS.
09:46AM 17 HE MET WITH -- HE WENT TO PALO ALTO ON TWO OCCASIONS, MET WITH
09:46AM 18 HOLMES AND BALWANI AND LEARNED INFORMATION ABOUT THERANOS. AND
09:46AM 19 THAT HE PUT INFORMATION THAT HE LEARNED INTO A DOCUMENT THAT
09:46AM 20 WE'VE SOMETIMES CALLED "MOSLEY'S OUTLINE," AND HE PREPARED THAT
09:46AM 21 FOR DR. KISSINGER, BUT HE TOLD YOU THAT ALSO IT SUMMARIZED
09:46AM 22 INFORMATION THAT HE FOUND USEFUL WHEN HE MADE HIS OWN DECISION
09:46AM 23 TO INVEST. WHILE THE PROJECT BEGAN AS AN EFFORT TO SHARE HIS
09:46AM 24 VIEWS WITH DR. KISSINGER, MOSLEY WAS EXCITED ABOUT WHAT HE WAS
09:46AM 25 HEARING AND PERSONALLY DECIDED TO INVEST.

1 AND ONE OF THE IMPORTANT THINGS THAT MOSLEY TOLD YOU WAS
2 THAT WITHIN THE INVESTMENT BINDERS, HE SAW THIS DOCUMENT THAT
3 IS ON THE LEFT SIDE OF YOUR SCREEN, THE PFIZER VALIDATION
4 REPORT. AND MOSTLY WROTE IN HIS OUTLINE THAT I FOUND THIS
5 DOCUMENT TO BE THE MOST PERSUASIVE VALIDATION OF THERANOS'S
6 TECHNOLOGY.

7 YOU MAY RECALL IN HIS OUTLINE, HE EVEN CUT AND PASTE
8 SENTENCES FROM THIS PFIZER REPORT THAT HE FOUND AS USEFUL
9 PROOF, AS VALIDATION THAT THE TECHNOLOGY WORKED. AND MOSLEY
10 TOLD YOU HE THOUGHT PFIZER PREPARED THIS DOCUMENT, HE THOUGHT
11 IT WAS THIRD PARTY OR EXTERNAL VALIDATION OF THERANOS'S
12 TECHNOLOGY, AND THAT MATTERED TO HIM.

13 HE SAID THAT HE WASN'T A SCIENTIST. HE DIDN'T HAVE THAT
14 BACKGROUND. AND WHEN HE WAS LOOKING THROUGH THE BINDERS OF
15 MATERIAL TO TRY TO FIGURE OUT WHETHER THE TECHNOLOGY WORKED,
16 THE THING HE FOUND MOST PERSUASIVE WAS THIS PFIZER REPORT.

17 YOU KNOW THAT PFIZER DIDN'T PREPARE THAT REPORT. YOU KNOW
18 THAT THERANOS PREPARED THAT REPORT.

19 BUT MOSLEY DID NOT. MOSLEY THOUGHT THESE WERE PFIZER'S
20 CONCLUSIONS AFTER PFIZER'S WORK.

21 BUT DR. WEBER TOLD YOU THAT WASN'T TRUE, THESE WERE NOT
22 PFIZER'S CONCLUSIONS, PFIZER DIDN'T PREPARE THIS REPORT, THIS
23 REPORT CAME FROM THERANOS.

24 THE NEXT WITNESS WHO TESTIFIED WAS ALAN EISENMAN.
25 ALAN EISENMAN WAS ALSO AN INVESTOR IN THERANOS.

09:48AM 1 THE INVESTMENT AT ISSUE FOR MR. EISENMAN CAME AT THE END
09:48AM 2 OF 2013. I TOLD YOU THAT WE'RE GOING TO GET TO SOME SPECIFIC
09:48AM 3 WIRES, SOME SPECIFIC ELECTRONIC FUNDS TRANSFERS OF INVESTMENTS,
09:48AM 4 SIX OF THEM, AND THEY ALL OCCUR AT THE VERY END OF 2013,
09:48AM 5 DECEMBER OF 2013, AND THEN THROUGH SEVERAL MONTHS IN 2014.

09:48AM 6 EISENMAN'S INVESTMENT WAS AT THE END OF 2013. WHAT I'M
09:48AM 7 SHOWING YOU HERE IS AN EMAIL THAT EISENMAN SENT TO HOLMES AND
09:48AM 8 BALWANI LATER IN '14, AFTER HE INVESTED. AND WHAT IS SO
09:49AM 9 INTERESTING ABOUT IT, IS THAT EISENMAN IS GETTING INFORMATION
09:49AM 10 FROM PUBLIC SOURCES ABOUT THERANOS.

09:49AM 11 THIS ONE HAPPENS TO BE A UBS ANALYST REPORT ABOUT
09:49AM 12 THERANOS. EISENMAN FINDS THIS, AND SENDS IT TO HOLMES AND
09:49AM 13 BALWANI. AND YOU CAN TELL HE FINDS IT SURPRISING. THE CONTENT
09:49AM 14 OF THE ANALYST REPORT IS NEWS TO EISENMAN. IT ISN'T STUFF THAT
09:49AM 15 HE KNEW ABOUT THERANOS.

09:49AM 16 YOU KNEW, AND I'LL LOOK AT IT IN A MOMENT, YOU KNOW THE
09:49AM 17 STUFF THAT IS IN THE REPORT IS TRUE, BUT EISENMAN WOULDN'T FIND
09:49AM 18 IT SURPRISING IF HE KNEW THE TRUTH WHEN HE INVESTED. IT'S ONLY
09:49AM 19 SURPRISING IF HE'S LEARNING SOMETHING IN THIS.

09:49AM 20 SO LOOK WHAT HE WRITES, "ELIZABETH AND SUNNY,

09:49AM 21 "THE LINK BELOW WILL ACCESS THE UBS REPORT ON THERANOS.
09:49AM 22 THEY CLAIM," UBS, "THAT THE BLOOD SAMPLES HAVE TO BE SENT TO
09:49AM 23 PALO ALTO, THEY ARE LESS RELIABLE THAN TRADITIONAL TESTS, AND
09:49AM 24 THE TURNAROUND TIME IS OVER 24 HOURS. HOPE TO CATCH UP SOON."

09:49AM 25 AND THEN HE EVEN CUTS AND PASTES SOME OF THE ANALYST

09:50AM 1 REPORTS. IT SAYS, "HOWEVER, THE MODEL AS SEEN IN A HANDFUL OF
09:50AM 2 WALGREENS'S LOCATIONS, HAS EVOLVED INTO A TRADITIONAL REFERENCE
09:50AM 3 LAB OFFERING WHERE BLOOD IS DRAWN MOSTLY THROUGH VENIPUNCTURE
09:50AM 4 AND SENT TO A REGIONAL LAB LOCATION WITH A 24-PLUS TURNAROUND.
09:50AM 5 OUR CONSULTANT BELIEVES IT IS HIGHLY UNLIKELY THAT ALL OF THESE
09:50AM 6 TESTS ARE BEING DONE ON ONE MACHINE."

09:50AM 7 AGAIN, ALL TRUE. THE TESTS ARE DONE -- THE DRAW IS DONE
09:50AM 8 AT WALGREENS STORE, AND THE BLOOD IS SHIPPED TO PALO ALTO. THE
09:50AM 9 BLOOD IS NOT BEING TESTED ALL ON ONE MACHINE.

09:50AM 10 SO EISENMAN SEES THIS AND THINKS THIS IS DIFFERENT, THIS
09:50AM 11 IS NOT WHAT I THOUGHT WAS GOING ON. SO HE TAKES THE TIME TO
09:50AM 12 FORWARD THAT TO HOLMES AND BALWANI.

09:50AM 13 AND LOOK WHAT SUNNY BALWANI WRITES IN RESPONSE. NOT "THIS
09:50AM 14 IS TRUE, I'M SORRY YOU'RE UNDER THE MISUNDERSTANDING, BUT ALL
09:50AM 15 OF THIS IS RIGHT." NO. "DOESN'T SURPRISE US. SOUNDS LIKE AN
09:51AM 16 UNINFORMED CONSULTANT."

09:51AM 17 BECAUSE WHAT IS FATAL TO FRAUD? THE TRUTH.

09:51AM 18 SO ANY TIME SOMEONE CONFRONTS SUNNY BALWANI WITH THE TRUTH
09:51AM 19 LIKE THIS, AND WE'RE GOING TO SEE MORE EXAMPLES OF THIS, HE HAS
09:51AM 20 TO SAY SOMETHING LIKE THIS.

09:51AM 21 THE NEXT WITNESS WHO TESTIFIED WAS DR. LYNETTE SAWYER.

09:51AM 22 WHEN DR. DHAWAN WAS ON THE STAND TALKING ABOUT HOW LITTLE
09:51AM 23 WORK HE DID AT THERANOS, THE DEFENSE ASKS SOME QUESTIONS DURING
09:51AM 24 CROSS-EXAMINATION THAT SUGGESTED, WELL, YOU MIGHT NOT HAVE BEEN
09:51AM 25 WORKING DURING THIS PERIOD OF TIME, BUT DID YOU KNOW THERANOS

09:51AM 1 HAD A CO-LAB DIRECTOR NAMED LYNETTE SAWYER, IS IT POSSIBLE THAT
09:51AM 2 SHE WAS DOING WORK?

09:51AM 3 AND THEN THE GOVERNMENT CALLED LYNETTE SAWYER. AND THEN
09:51AM 4 YOU SAW, IF IT'S POSSIBLE, SHE MIGHT HAVE ACTUALLY DONE LESS
09:51AM 5 WORK THAN DR. DHAWAN.

09:51AM 6 DR. DHAWAN WENT INTO THERANOS. LYNETTE SAWYER NEVER DID.

09:52AM 7 DR. DHAWAN SAW DOCUMENTS THAT SUGGESTED THEY WERE ACTUALLY
09:52AM 8 USING THE EDISON DEVICE, THEIR OWN DEVICE, FOR TESTING.

09:52AM 9 DR. SAWYER TOLD YOU SHE THOUGHT THAT WAS AN IDEA. SHE
09:52AM 10 NEVER SAW ANY DOCUMENTS SUGGESTING THAT THERANOS WAS ACTUALLY
09:52AM 11 USING ITS OWN DEVICE FOR TESTING.

09:52AM 12 SO IF IT WAS POSSIBLE TO FIND A LAB DIRECTOR WHO DID LESS
09:52AM 13 WORK AT THERANOS THAN DR. DHAWAN, IT WAS HIS CO-LAB DIRECTOR,
09:52AM 14 DR. SAWYER.

09:52AM 15 THE NEXT WITNESS WHO TESTIFIED WAS ANOTHER INVESTOR,
09:52AM 16 CHRIS LUCAS. BUT WHAT I WANT TO HIGHLIGHT FOR YOU HERE IS
09:52AM 17 ACTUALLY SOMETHING THAT CAME OUT DURING CROSS-EXAMINATION OF
09:52AM 18 LUCAS.

09:52AM 19 LATER ON WE'RE GOING TO TALK ABOUT SOME ARGUMENTS THAT THE
09:52AM 20 DEFENSE HAS MADE TO YOU IN OPENING OR AT OTHER TIMES.

09:52AM 21 WHAT I WANT TO HIGHLIGHT FOR YOU HERE IS A LINE OF
09:52AM 22 QUESTIONS THAT -- SUGGESTING THAT INSIDE THE FOUR WALLS OF
09:52AM 23 THERANOS, IT WAS MERELY A BUSINESS DECISION WHICH DEVICE THEY
09:53AM 24 USED FOR WHICH TEST. IF THEY USED THE THERANOS EDISON DEVICE
09:53AM 25 FOR A CHOLESTEROL TEST OR A SIEMENS DEVICE FOR A CALCIUM TEST,

09:53AM 1 YOU, AS AN INVESTOR, MR. LUCAS, WOULD NOT HAVE EXPECTED TO HAVE
09:53AM 2 BEEN INVOLVED IN THOSE KIND OF DECISIONS, BUT THE INTERNAL
09:53AM 3 BUSINESS DECISION, RIGHT?

09:53AM 4 AND WHAT MR. LUCAS SAID IS, THAT WOULD HAVE BEEN SHOCKING
09:53AM 5 TO ME, NOT THAT I WASN'T INVOLVED IN THE DECISIONS, BUT THAT
09:53AM 6 THAT WAS EVEN AN OPTION, THAT PICKING AMONG DEVICES WAS THE
09:53AM 7 KIND OF BUSINESS DECISION THAT THERANOS WOULD NEED TO BE MAKING
09:53AM 8 BECAUSE LUCAS'S UNDERSTANDING AT INVESTMENT WAS THAT THERANOS
09:53AM 9 USED THERANOS DEVICES FOR BLOOD TESTING.

09:53AM 10 SO EVEN DURING CROSS-EXAMINATION OF WITNESSES, THEY'RE
09:53AM 11 STILL TELLING YOU MY UNDERSTANDING OF THERANOS, WHAT I THOUGHT
09:53AM 12 THIS COMPANY WAS WHEN I INVESTED IS SO COMPLETELY DIFFERENT
09:53AM 13 THAN WHAT THE REALITY WAS, THAT IF YOU'RE TELLING ME THAT THEY
09:53AM 14 WERE MAKING BUSINESS DECISIONS TO USE ONE DEVICE OVER ANOTHER,
09:54AM 15 I FIND THAT SHOCKING.

09:54AM 16 THE NEXT WITNESS WHO TESTIFIED IS DR. ZACHMAN. WE NOW
09:54AM 17 HAVE MOVED INTO THE DOCTOR-PATIENT SIDE OF THE CASE. YOU HAVE
09:54AM 18 HEARD THAT IN ADDITION TO DEFRAUDING INVESTORS, THERANOS HAS
09:54AM 19 ALSO DEFRAUDED PATIENTS.

09:54AM 20 AND THE FIRST DOCTOR TO TAKE THE STAND WAS DR. ZACHMAN.
09:54AM 21 SHE TALKED TO YOU ABOUT A TEST CALLED HCG. SHE EXPLAINED TO
09:54AM 22 YOU WHAT THAT TEST IS, WHAT IT TESTS FOR, AND SHE TALKED TO YOU
09:54AM 23 ABOUT A PARTICULAR PATIENT OF HERS NAMED BRITTANY GOULD.

09:54AM 24 AND DR. ZACHMAN TOLD YOU THAT WHILE IN A HEALTHY PREGNANCY
09:54AM 25 YOU EXPECT HCG TO ROUGHLY DOUBLE EVERY 48 HOURS, THAT ISN'T

09:54AM 1 WHAT WAS HAPPENING IN BRITTANY GOULD'S TEST.

09:54AM 2 BRITTANY GOLD WENT TO THERANOS AND GOT SOME HCG TESTS, AND
09:54AM 3 THEY WERE NOT DOUBLING. AND KNOWING WHAT SHE KNOWS NOW,
09:54AM 4 DR. ZACHMAN TOLD YOU THAT THERANOS'S TESTS WERE NOT ACCURATE.

09:55AM 5 MS. GOULD DID CARRY A HEALTHY PREGNANCY TO TERM, AND
09:55AM 6 THAT, WITH OTHER EVIDENCE, LEADS DR. ZACHMAN TO CONCLUDE THAT
09:55AM 7 THE THERANOS HCG TESTS WERE NOT ACCURATE.

09:55AM 8 THE NEXT WITNESS WHO TESTIFIED WAS MS. GOULD HERSELF. AND
09:55AM 9 BETWEEN MS. GOULD AND DR. ZACHMAN, YOU SAW THE TESTS, THE HCG
09:55AM 10 TESTS THAT MS. GOULD HAD, AND THE SECOND AND THIRD WERE
09:55AM 11 THERANOS'S TESTS. AND YOU SEE THAT THEY WERE NOT DOUBLING
09:55AM 12 EVERY 48 HOURS AS YOU WOULD EXPECT, SO THAT LED TO
09:55AM 13 DR. ZACHMAN'S CONCLUSION.

09:55AM 14 BUT YOU ALSO HEARD IF YOU REMOVE THE THREE THERANOS TESTS,
09:55AM 15 SO YOU'RE ONLY LOOKING AT THE FIRST AND THEN THE FIFTH AND
09:55AM 16 SIXTH TESTS, THE ONES BY QUEST, THEY ACTUALLY ARE DOUBLING,
09:55AM 17 ROUGHLY DOUBLING EVERY 48 HOURS OVER THAT PERIOD OF TIME,
09:55AM 18 FURTHER EVIDENCE TO DR. ZACHMAN THAT THERANOS HCG TESTING WAS
09:56AM 19 NOT ACCURATE.

09:56AM 20 DR. BURNES WAS THE NEXT WITNESS WHO TESTIFIED. DR. BURNES
09:56AM 21 AND HIS PATIENTS TOLD YOU ABOUT THE PSA TESTS THAT
09:56AM 22 DR. ELLSWORTH HAD. DR. BURNES TOLD YOU THAT HE HAS EXPERIENCE
09:56AM 23 WITH PSA TESTING, THAT IT IS USED TO DIAGNOSE PROSTATE CANCER,
09:56AM 24 AND THAT THE TREND DATA IS WHAT YOU LOOK FOR AS A PHYSICIAN, TO
09:56AM 25 SEE THE RISE, HOW QUICKLY THE PSA SCORES GO UP, AND THAT IN

09:56AM 1 DR. ELLSWORTH'S CASE, IN DR. BURNES'S PATIENT, THAT WASN'T
09:56AM 2 OCCURRING. YOU WEREN'T SEEING WHAT YOU WOULD EXPECT TO SEE.
09:56AM 3 YOU SAW A GIANT JUMP FROM 2 TO IN THE 20'S.

09:56AM 4 AND DR. BURNES TOLD YOU THAT THE THERANOS TESTS FOR PSA
09:57AM 5 ALSO WEREN'T ACCURATE.

09:57AM 6 BUT I'LL SHOW YOU IN A MOMENT DR. ELLSWORTH TESTIFIED, AND
09:57AM 7 YOU CAN SEE BECAUSE OF AN INTERNAL THERANOS EMAIL, WHICH
09:57AM 8 SPECIFIC DEVICES WERE USED FOR EACH OF ELLSWORTH'S PSA TEST.

09:57AM 9 YOU KNOW THAT HIS FIRST AND THIRD PSA TEST WERE RUN ON THE
09:57AM 10 EDISON. HIS SECOND AND FOURTH THERANOS PSA TEST WERE RUN AT
09:57AM 11 THERANOS BUT ON COMMERCIAL ANALYZERS.

09:57AM 12 RECALL AT THERANOS THERE WERE ESSENTIALLY THREE WAYS OR
09:57AM 13 THREE MACHINES THAT BLOOD COULD BE TESTED ON:

09:57AM 14 IT COULD BE TESTED ON AN EDISON DEVICE, THE THERANOS BOX;

09:57AM 15 IT COULD BE TESTED ON A COMMERCIAL DEVICE. SIEMENS IS A
09:57AM 16 MANUFACTURER THAT YOU HEARD ABOUT DURING THE TRIAL.

09:57AM 17 AND THEN THERE WAS A THIRD WAY. THEY TOOK A SIEMENS
09:57AM 18 DEVICE, A THIRD PARTY DEVICE, AND MODIFIED IT. SO WE'VE BEEN
09:57AM 19 CALLING IT THE MODIFIED COMMERCIAL OR THE MODIFIED THIRD PARTY
09:58AM 20 DEVICE.

09:58AM 21 IN DR. ELLSWORTH'S CASE, THE FIRST AND THIRD TEST WERE
09:58AM 22 DONE ON AN EDISON DEVICE, AND THOSE WERE THE ONES THAT
09:58AM 23 GENERATED SCORES IN THE 20'S.

09:58AM 24 AND DR. BURNES TOLD YOU THAT AFTER THE FIRST TWO,
09:58AM 25 DR. ELLSWORTH WAS ABOUT TO TAKE SOME TRAVEL, AND BEFORE HE FELT

09:58AM 1 COMFORTABLE LETTING ELLSWORTH TRAVEL, HE WANTED A TIEBREAKER,
09:58AM 2 HE WANTED A THIRD. SO ONCE AGAIN, FOR A THIRD TIME,
09:58AM 3 DR. ELLSWORTH GOES INTO A WALGREENS, PAYS FOR THE TEST, GETS A
09:58AM 4 FINGERSTICK, AND THEN GETS THIS THIRD RESULT, THE THIRD ONE,
09:58AM 5 THE 22.

09:58AM 6 AND DR. BURNES SAYS, WELL, I THOUGHT THAT WAS GOING TO BE
09:58AM 7 THE TIEBREAKER, BUT I'M STILL CONCERNED. WHY DON'T WE JUST
09:58AM 8 HAVE A TRADITIONAL VEIN DRAW. NO MORE OF THIS FINGERSTICK
09:58AM 9 STUFF.

09:58AM 10 SO BURNES, IN COMMUNICATION WITH THERANOS, DECIDES TO SEND
09:58AM 11 A PHLEBOTOMIST TO DR. ELLSWORTH'S DENTIST OFFICE. AND REMEMBER
09:58AM 12 ELLSWORTH SAID, HE SAT DOWN IN HIS OWN DENTIST CHAIR, PUT HIS
09:59AM 13 ARM OUT, GOT A VEIN DRAW, AND THAT'S WHAT RESULTED IN THE
09:59AM 14 FOURTH THERANOS TEST. THE FOURTH SCORE WAS BELOW 1.

09:59AM 15 BURNES SAID, OKAY, NOW I'M COMFORTABLE. YOU CAN GO ON
09:59AM 16 YOUR INTERNATIONAL TRAVEL.

09:59AM 17 AND THEN FOR GOOD MEASURE, YOU SAW A TEST TWO YEARS LATER
09:59AM 18 FROM A DIFFERENT LAB, STILL SHOWING A LOW PSA SCORE FOR
09:59AM 19 DR. ELLSWORTH. SO BURNES CONCLUDED FOR YOU THAT THE THERANOS
09:59AM 20 PSA TESTS WERE NOT ACCURATE.

09:59AM 21 BRENT BINGHAM WAS THE NEXT WITNESS WHO TESTIFIED. HE TOLD
09:59AM 22 YOU ABOUT A HEALTH CONDITION, A MEDICAL CONDITION THAT REQUIRES
09:59AM 23 HIM TO HAVE HIS PLATELETS TESTED QUITE OFTEN.

09:59AM 24 AND HE HAS THE TESTING DONE SO OFTEN, THAT BASED ON HOW HE
09:59AM 25 IS FEELING ON ANY CERTAIN DAY, HE CAN TELL YOU ROUGHLY WHERE

09:59AM 1 HIS PLATELET SCORE SHOULD BE BASED ON HOW HE'S FEELING AND SORT
09:59AM 2 OF THE SYMPTOMS HE IS FEELING IN HIS BODY.

09:59AM 3 SO HE DID SOMETHING INTERESTING. MR. BINGHAM WENT TO
10:00AM 4 THERANOS AND ANOTHER LAB CALLED ACCESS ON THE SAME DAY. HE
10:00AM 5 GETS HIS BLOOD TESTED SO FREQUENTLY THAT A LAB TESTING LIKE
10:00AM 6 THERANOS THAT COULD DO BLOOD TESTING LESS EXPENSIVE AND FROM A
10:00AM 7 FINGERSTICK WAS VERY APPEALING TO HIM, BUT ONLY IF IT IS
10:00AM 8 ACCURATE. AND HE WAS HAVING SOME QUESTIONS, SO HE WANTED TO DO
10:00AM 9 HIS OWN TEST.

10:00AM 10 SO ON THE VERY SAME DAY HE DROVE TO TWO LABS AND HAD BLOOD
10:00AM 11 TAKEN FROM EACH ONE. AND HE TOLD YOU HE GOT WILDLY DIFFERENT
10:00AM 12 SCORES FROM EACH OF THEM. YOU CAN SEE ON THE DOCUMENT THAT HE
10:00AM 13 GOT IN THE 900'S AT THERANOS, IN THE 700'S AT ACCESS, AND THAT
10:00AM 14 HE KNOWS BASED ON HOW HE WAS FEELING THAT DAY THAT THE ONE IN
10:00AM 15 THE 700'S WAS THE ONE THAT WAS ACCURATE.

10:00AM 16 THE NEXT WITNESS WHO TESTIFIED WAS ERIN TOMPKINS. YOU
10:00AM 17 WILL RECALL THAT MS. TOMPKINS HAD AN HIV TEST AT THERANOS. AND
10:00AM 18 SHE TOLD YOU THAT STORY. SHE TOLD YOU ABOUT THE CIRCUMSTANCES
10:00AM 19 OF THAT TEST, HOW THERANOS TOLD HER THAT SHE WAS REACTIVE FOR
10:01AM 20 HIV-1, 2 ANTIBODIES, AND THAT THERE WAS NO WAY THAT THAT WAS AN
10:01AM 21 ACCURATE RESULT. SORT OF KNOWING WHAT SHE KNOWS, SHE KNOWS
10:01AM 22 THAT WAS NOT AN ACCURATE RESULT FROM THERANOS.

10:01AM 23 AND THE FINAL WITNESS THAT THE GOVERNMENT CALLED WAS
10:01AM 24 BRIAN GROSSMAN. MR. GROSSMAN WAS AN INVESTOR. HE WORKED FOR A
10:01AM 25 COMPANY CALLED PFM. AND HE TOLD YOU ABOUT THE WORK THAT HE DID

10:01AM 1 TO LEARN ABOUT THERANOS BEFORE PFM MADE A DECISION TO INVEST.

10:01AM 2 AND YOU HEARD AND PROBABLY OBSERVED THAT MR. GROSSMAN WAS
10:01AM 3 A SOPHISTICATED INVESTOR. HE CREATED LISTS OF DUE DILIGENCE
10:01AM 4 QUESTIONS BEFORE MEETING WITH HOLMES AND BALWANI, AND THEN
10:01AM 5 COVERED THOSE QUESTIONS IN MEETINGS, AND THEN SENT FOLLOW-UP
10:01AM 6 QUESTIONS.

10:01AM 7 AND RECALL THAT HE EVEN GOT GRANULAR TO THE POINT OF
10:02AM 8 TRYING TO CALCULATE THE SQUARE FOOTAGE THAT THERANOS WOULD NEED
10:02AM 9 FOR A LAB TO COVER A CERTAIN MARKET, SO HOW BIG DOES YOUR LAB
10:02AM 10 NEED TO BE IN PHOENIX OR IN OTHER MARKETS IN ORDER TO SERVICE
10:02AM 11 THAT POPULATION BECAUSE THAT AFFECTS HOW MUCH REVENUE YOU NEED
10:02AM 12 TO GENERATE, THAT AFFECTS THE LEASES, THE REAL ESTATE LEASES
10:02AM 13 THAT AS A BUSINESS YOU WILL NEED TO SIGN.

10:02AM 14 SO THERANOS, USING ITS OWN TESTING DEVICES, IT'S SMALL
10:02AM 15 EDISON BOXES, COMPARED TO THE LARGE COMMERCIALLY AVAILABLE
10:02AM 16 MACHINES REALLY MATTERED TO AN INVESTOR LIKE GROSSMAN BECAUSE
10:02AM 17 THE LARGE MACHINES TAKE UP MORE REAL ESTATE AND YOU NEED IT TO
10:02AM 18 GENERATE MORE REVENUE. AND IF YOU'RE USING THOSE, YOU'RE JUST
10:02AM 19 LIKE QUEST OR LABCORP, COMPANIES THAT HE'S FAMILIAR WITH.

10:02AM 20 BUT THERANOS WAS TELLING HIM, AND YOU CAN SEE HERE, THAT
10:02AM 21 THEY WERE USING THEIR OWN DEVICES FOR LAB TESTING. FOR HUGE
10:02AM 22 NUMBERS OF TESTS AVAILABLE, THEY WERE USING THEIR OWN DEVICES.
10:02AM 23 AND IT WASN'T JUST THE NOVELNESS OF THE TECHNOLOGY AS AN IDEA
10:03AM 24 THAT MATTERED TO GROSSMAN, BUT IT IS REALLY THIS GRANULAR
10:03AM 25 REVENUE, HOW MUCH YOU NEED TO EARN TO REMAIN PROFITABLE, HOW

10:03AM 1 YOUR DEVICES CAN THEN TAKE OVER MARKETS AND REALLY BE A COST
10:03AM 2 BENEFIT OVER THE CURRENT TECHNOLOGY, QUEST OR LABCORP.

10:03AM 3 AND HE TOLD YOU THAT -- YOU CAN SEE FROM THIS PORTION OF
10:03AM 4 THE TRANSCRIPT -- THAT THE REALITY, THE THINGS THAT HE LATER
10:03AM 5 LEARNED WERE SHOCKING. HE DIDN'T KNOW ANYTHING OF WHAT
10:03AM 6 THERANOS WAS ACTUALLY DOING TO TEST BLOOD.

10:03AM 7 SO I TOLD YOU THE FIRST TOPIC WE WERE GOING TO COVER WAS A
10:03AM 8 SUMMARY OF THE PATIENTS.

10:03AM 9 AND THE NEXT TOPIC IS THE CRIMES, WHAT CRIMES THE
10:03AM 10 GOVERNMENT CHARGED MR. BALWANI WITH COMMITTING. AND I TOLD YOU
10:03AM 11 AT THE VERY BEGINNING THAT THIS CASE REALLY INVOLVES TWO
10:03AM 12 SCHEMES TO DEFRAUD: HOLMES AND BALWANI FIRST SCHEME TO DEFRAUD
10:03AM 13 INVESTORS AND THEN THEY SCHEMED TO DEFRAUD THE PATIENTS. AND
10:04AM 14 THERE ARE STEPS INVOLVED IN THE SCHEME, AND YOU HAVE SEEN
10:04AM 15 EVIDENCE TO SUPPORT EACH STEP.

10:04AM 16 YOU KNOW THERANOS WAS RUNNING OUT OF MONEY BECAUSE YOU'VE
10:04AM 17 SEEN IT IN CASH BALANCES. YOU'VE SEEN IT IN INCOME STATEMENTS.
10:04AM 18 YOU KNOW THEIR REVENUE WAS INSIGNIFICANT OVER MOST OF THE
10:04AM 19 YEARS.

10:04AM 20 THEY THEN MADE THE DECISION TO RECRUIT INVESTORS. AND YOU
10:04AM 21 HEARD FROM THE INVESTORS THAT I'VE LISTED HERE. YOU HEARD FROM
10:04AM 22 EVEN ANOTHER, PAT MENDENHALL.

10:04AM 23 THEY LURED INVESTORS THROUGH MISREPRESENTATIONS. AND THIS
10:04AM 24 MORNING WE'RE GOING TO CALL THEM THE CATEGORIES OF FALSE
10:04AM 25 STATEMENTS. THE CATEGORIES INCLUDED THINGS THAT WE TALKED

10:04AM 1 ABOUT AT THE BEGINNING THAT I TOLD YOU WHAT THEY WOULD HAVE HAD
10:04AM 2 TO SAY IF THEY WERE BEING HONEST.

10:04AM 3 HERE YOU SEE WHAT THEY WERE ACTUALLY TELLING INVESTORS:

10:04AM 4 WALGREENS EXPANSION -- THE RELATIONSHIP WITH WALGREENS WAS
10:04AM 5 GOING WELL, AND THEY WERE GOING TO FURTHER EXPAND; THE
10:04AM 6 CAPABILITIES OF THE THERANOS DEVICES; THAT THEY WEREN'T USING
10:05AM 7 THIRD PARTY DEVICES; THEY PROVIDED FALSE FINANCIAL PROJECTIONS,
10:05AM 8 AND THEY MADE FALSE STATEMENTS ABOUT PRIOR WORK THAT THEY HAD
10:05AM 9 DONE EITHER WITH PREVIOUS COMPANIES OR THE DEPARTMENT OF
10:05AM 10 DEFENSE.

10:05AM 11 THESE STATEMENTS REACHED INVESTORS. THEY WERE
10:05AM 12 DISSEMINATED IN A FEW DIFFERENT WAYS. SOME APPEARED ON THE
10:05AM 13 THERANOS WEBSITE, SOME WERE IN INVESTOR BINDERS, SOME WERE
10:05AM 14 COMMUNICATED DURING DEMONSTRATIONS, VIP DEMOS, AND SOME WERE IN
10:05AM 15 MEDIA ARTICLES.

10:05AM 16 AND WHEN I SAY THAT, I DON'T JUST MEAN -- AND I THINK YOU
10:05AM 17 HAVE HEARD THIS ARGUMENT DURING THE COURSE OF THE TRIAL -- THAT
10:05AM 18 SOMETIMES THERE CAN BE AN ARTICLE PUBLISHED THAT DOESN'T GET
10:05AM 19 EVERY FACT CORRECT. SOMETIMES INCORRECT INFORMATION MAKES ITS
10:05AM 20 WAY INTO AN ARTICLE. THAT'S NOT WHAT I MEAN HERE.

10:05AM 21 WHAT WAS OCCURRING HERE WAS EITHER THERANOS AT TIMES WAS
10:05AM 22 SENT THE QUOTES BEFORE THEY WERE PUBLISHED AND SAID OKAY, OR
10:05AM 23 SAW THE ARTICLES AFTER THEY WERE PUBLISHED AND STILL SENT THOSE
10:06AM 24 ARTICLES TO INVESTORS.

10:06AM 25 IT'S ONE THING IF THE INVESTOR STUMBLES UPON SOME ARTICLE

10:06AM 1 THAT WASN'T SANCTIONED, THAT WASN'T PITCHED BY THERANOS AS A
10:06AM 2 SOURCE OF RELIABLE INFORMATION. THAT'S NOT WHAT I'M TALKING
10:06AM 3 ABOUT HERE.

10:06AM 4 WHAT I'M TALKING ABOUT IS THERANOS IN THE INVESTOR BINDER
10:06AM 5 OR THERANOS IN EMAILS SENDING LINKS OR CUTTING AND PASTING THE
10:06AM 6 ACTUAL ARTICLE AND SENDING THEM TO INVESTORS WHEN THE ARTICLE
10:06AM 7 ITSELF CONTAINED FALSE STATEMENTS. THAT'S THE KIND OF
10:06AM 8 DISSEMINATION THAT OCCURRED HERE.

10:06AM 9 AND THEN, FINALLY, RELYING UPON THESE FALSE STATEMENTS,
10:06AM 10 INVESTORS INVESTING. WE'LL COVER THESE AMOUNTS, AND I'LL MATCH
10:06AM 11 THEM UP A LITTLE BIT LATER, BUT NOTICE THE AMOUNTS ARE ROUGHLY
10:06AM 12 BETWEEN \$100,000 AND \$100 MILLION JUST FROM THESE SIX
10:06AM 13 INVESTORS.

10:06AM 14 THERE WAS ALSO A SCHEME TO DEFRAUD PATIENTS. HERE YOU
10:06AM 15 KNOW THAT MR. BALWANI EXERCISED CONTROL OVER THE CLIA LAB AT
10:06AM 16 THERANOS. THEY HAD TWO DIFFERENT LABS. WE'LL TALK MORE ABOUT
10:07AM 17 THIS IN A MOMENT. THEY HAD A RESEARCH AND DEVELOPMENT AND THE
10:07AM 18 CLIA LAB.

10:07AM 19 THE CLIA LAB IS WHERE PATIENT'S BLOOD WAS TESTED. AND
10:07AM 20 MR. BALWANI RAN THE CLIA LAB IN THE ORG CHART. HE WAS ON TOP
10:07AM 21 OF IT.

10:07AM 22 AND YOU HEARD FROM WITNESS TESTIMONY THAT IN PRACTICE, HE
10:07AM 23 DID, TOO. HE WASN'T JUST ON A PIECE OF PAPER ON TOP OF THE
10:07AM 24 CLIA LAB, BUT IN PRACTICE HE WAS THE ONE WHO WAS MAKING THE
10:07AM 25 DECISIONS. YOU HEARD THAT FROM LAB DIRECTORS, YOU SEE IT IN

1 TEXT MESSAGES, AND YOU'VE READ IT IN EMAILS.

2 MR. BALWANI AND MS. HOLMES KNEW OF PROBLEMS IN THE CLIA
3 LAB, AND YOU KNOW THAT BECAUSE YOU'VE READ IT IN TEXT MESSAGES,
4 YOU'VE SEEN IT IN EMAILS. LAB DIRECTORS GOT ON THE STAND AND
5 TOLD YOU THERE WERE PROBLEMS AND TOLD YOU THEY COMMUNICATED
6 THOSE PROBLEMS TO HOLMES AND BALWANI, AND EMPLOYEES WHO WEREN'T
7 LAB DIRECTORS LIKE MS. CHEUNG ALSO TOLD YOU SHE SAW PROBLEMS
8 AND SHE WENT DIRECTLY TO MR. BALWANI.

9 THERANOS MARKETING ITS LAB TO PATIENTS WITH STATEMENTS THEY
10 KNEW WEREN'T TRUE, THINGS LIKE THE "HIGHEST LEVELS OF
11 ACCURACY," OR "HIGHEST QUALITY," THE "FULL RANGE OF TESTS," AND
12 "ONE TINY DROP" TO SUGGEST THAT YOU GET YOUR BLOOD DRAWN BY
13 FINGERSTICK.

14 THEY THEN DISSEMINATED THESE FALSE STATEMENTS IN SIMILAR
15 WAYS. IT WAS SOMETIMES -- THESE WERE SOMETIMES ON THE THERANOS
16 WEBSITE. DURING THE TRIAL, YOU ACTUALLY SAW A PATIENT BROCHURE
17 THAT CONTAINED FALSE STATEMENTS.

18 THERE'S SOMETHING CALLED THE HORIZON MEDIA BUY. A LITTLE
19 BIT LATER I'LL SHOW YOU WHERE THERANOS ITSELF DOES A WIRE
20 TRANSFER NOT RECEIVING MONEY, BUT SPENDING MONEY TO PURCHASE
21 ADVERTISING IN THE ARIZONA MARKET AND IT'S IN MEDIA ARTICLES.

22 SO JUST LIKE INVESTORS RECEIVED ARTICLES THAT BRAGGED
23 ABOUT THE ACCURACY OF THERANOS'S TESTS, PATIENTS ALSO READ THAT
24 IN ARTICLES RELIED UPON AND HAD PAID FOR THERANOS TESTS.

25 AND THEN YOU HEARD FROM SPECIFIC PATIENTS WHO RELIED ON

10:09AM 1 THESE REPRESENTATIONS, GOT BLOOD TESTS, AND THE TESTS WERE NOT
10:09AM 2 ACCURATE.

10:09AM 3 SO THE CHARGES. THE GOVERNMENT CHARGED TWO CRIMES IN THIS
10:09AM 4 CASE. THE FIRST CRIME IS CALLED CONSPIRACY TO COMMIT WIRE
10:09AM 5 FRAUD. IT'S IN VIOLATION OF SECTION 1349.

10:09AM 6 THE SECOND CRIME IS WIRE FRAUD ITSELF. THAT'S IN
10:09AM 7 VIOLATION OF SECTION 1343. SO TWO CRIMES TOTAL: CONSPIRACY TO
10:09AM 8 COMMIT WIRE FRAUD AND WIRE FRAUD.

10:09AM 9 BUT BECAUSE THERE ARE SEPARATE SCHEMES, THERE'S A SCHEME
10:09AM 10 TO DEFRAUD INVESTORS AND THERE'S A SCHEME TO DEFRAUD PATIENTS,
10:09AM 11 EACH OF THOSE CRIMES IS CHARGED MORE THAN ONCE. SO THE
10:09AM 12 CONSPIRACY CRIME IS CHARGED AS TO INVESTORS, AND THE CONSPIRACY
10:09AM 13 CRIME IS CHARGED AS TO PATIENTS.

10:09AM 14 THEN THE SUBSTANTIVE WIRE FRAUD CHARGES ARE CHARGED AS TO
10:10AM 15 INVESTORS, AND THEY'RE CHARGED AS TO PATIENTS. SO THEY
10:10AM 16 CONSPIRED TO DEFRAUD INVESTORS, AND EACH CONSPIRACY LASTS FOR A
10:10AM 17 PARTICULAR PERIOD OF TIME. THE CONSPIRACY TO DEFRAUD
10:10AM 18 INVESTORS, WHICH IS COUNT ONE, RAN FROM 2010 TO 2015, ALL YEARS
10:10AM 19 MR. BALWANI WORKED AT THERANOS.

10:10AM 20 AND THEN THERE ARE SUBSTANTIVE WIRE FRAUD COUNTS FOR
10:10AM 21 INVESTORS, SPECIFIC INVESTORS SENDING MONEY VIA WIRE TO
10:10AM 22 THERANOS, THEIR INVESTMENTS WEREN'T SORT OF WRITTEN AND HANDED
10:10AM 23 OVER ON A CHECK. THEY WIRED MONEY. INSTANCES OF WIRE FRAUD.

10:10AM 24 AS TO PATIENTS, THE PATIENT CONSPIRACY ALSO LASTED FOR A
10:10AM 25 PARTICULAR PERIOD OF TIME. THE PATIENT CONSPIRACY LASTED FROM

1 2013 THROUGH 2016. THOSE ARE THE YEARS THAT THERANOS OPERATED
2 INSIDE OF WALGREENS STORES.

3 THERE ARE ALSO SPECIFIC WIRE FRAUD COUNTS RELATED TO
4 PATIENTS. THERE ARE FOUR OF THEM. THERE'S A PHONE CALL WE'LL
5 TALK ABOUT FROM MR. BINGHAM, THE PLATELETS TEST. FORGIVE ME
6 FOR CALLING PATIENTS BY THEIR TEST. AND THEN THERE'S THE TESTS
7 RELATED TO MR. ELLSWORTH, WHO GOT THE PSA TEST, AND
8 MS. TOMPKINS, WHO GOT THE HIV TEST.

9 AND THEN THERE'S A FINAL WIRE FRAUD COUNT FOR THE HORIZON
10 MEDIA. PART OF THE SCHEME TO DEFRAUD PATIENTS WAS TO ADVERTISE
11 TO THEM. SO THERANOS BOUGHT ADVERTISING IN ARIZONA, AND THAT,
12 TOO, IS A SPECIFIC WIRE FRAUD COUNT.

13 SO THE CASE INVOLVES TWO CRIMES, BUT THE CRIMES ARE
14 CHARGED MULTIPLE WAYS. THERE ARE 12 TOTAL CRIMES.

15 SO WHEN YOU'RE DELIBERATING, YOU WILL BE GIVEN A VERDICT
16 FORM, AND YOU'RE GOING TO BE ASKED ON THE VERDICT FORM TO WRITE
17 GUILTY OR NOT GUILTY ON 12 LINES FOR EACH OF THE SEPARATE
18 COUNTS, AND WE'LL GO THROUGH EACH OF THOSE COUNTS, WHICH COUNT
19 RELATES TO WHICH INVESTOR OR WHICH PATIENT OR WHETHER IT'S A
20 CONSPIRACY COUNT.

21 SO I TOLD YOU WE'RE GOING TO TALK ABOUT WITNESSES, AND
22 THEN WE'RE GOING TO TALK ABOUT THE CRIMES, THE CHARGES.

23 AND THE FINAL TWO TOPICS THAT WE WILL COVER ARE THE
24 ELEMENTS, WHAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE
25 DOUBT FOR YOU TO CONVICT MR. BALWANI AND THEN THE EVIDENCE,

1 WHAT THE EVIDENCE IS THAT SUPPORTS THOSE ELEMENTS. I'M GOING
2 TO COMBINE THOSE LAST TWO, THE ELEMENTS AND THE EVIDENCE SO
3 THAT AS WE'RE GOING THROUGH THE ELEMENTS, I WILL BE SHOWING YOU
4 EVIDENCE THAT YOU HAVE SEEN DURING THE COURSE OF THE TRIAL THAT
5 SUPPORTS THAT CHARGE.

6 BECAUSE THE SAME CRIMES ARE CHARGED MULTIPLE TIMES, WE
7 DON'T HAVE TO GO THROUGH THE ELEMENTS QUITE AS SLOWLY LATER ON.
8 I'LL GO THROUGH THEM MORE SLOWLY AT THE BEGINNING SO YOU CAN
9 SEE THE ELEMENTS OF CONSPIRACY AND THE ELEMENTS OF WIRE FRAUD,
10 BUT LATER ON WHEN WE SEE THOSE ELEMENTS REPEAT, I WON'T TAKE AS
11 MUCH TIME WITH THEM.

12 AT THE END OF MY ARGUMENT, THE DEFENSE HAS THE
13 OPPORTUNITY, IF THEY CHOOSE, TO GIVE A CLOSING; THE GOVERNMENT
14 HAS THE FINAL ARGUMENT CALLED THE REBUTTAL; AND THEN THE JUDGE
15 READS YOU JURY INSTRUCTIONS.

16 IN THE JURY INSTRUCTIONS, INSTRUCTIONS TO GUIDE YOUR
17 DELIBERATIONS, THE JUDGE WILL READ YOU THE ELEMENTS, WHAT THE
18 ELEMENTS ARE FOR WIRE FRAUD, FOR CONSPIRACY. WHAT THE JUDGE
19 SAYS CONTROLS. THESE ARE WHAT I THINK THE JUDGE IS GOING TO
20 SAY THE ELEMENTS ARE.

21 SO THE ELEMENTS FOR CONSPIRACY ARE TWO: THE GOVERNMENT
22 MUST PROVE THAT THERE WAS AN AGREEMENT BETWEEN TWO OR MORE
23 PEOPLE, THAT'S HOLMES AND BALWANI IN THIS CASE, TO COMMIT WIRE
24 FRAUD AS CHARGED IN THE INDICTMENT;

25 AND SECOND, THAT MR. BALWANI BECAME A MEMBER OF THE

1 CONSPIRACY KNOWING OF AT LEAST ONE OF ITS OBJECTS AND INTENDING
2 TO HELP ACCOMPLISH IT.

3 SO LET'S BREAK THOSE OUT. THE FIRST ELEMENT IS THAT THERE
4 WAS AN AGREEMENT.

5 FIRST, WHAT WAS THE AGREEMENT AS TO INVESTORS? WELL, IT
6 WAS TO MAKE FALSE STATEMENTS TO INVESTORS IN ORDER TO GET
7 MONEY; IT'S THE AGREEMENT TO COMMIT WIRE FRAUD, IT'S NOT THE
8 ACTUAL COMMISSION OF WIRE FRAUD. THE MONEY THAT COMES BACK
9 FROM INVESTORS IS THE SUBSTANTIVE WIRE FRAUD COUNTS WHEN HALL
10 WIRES MONEY TO THERANOS OR TOLBERT OR EISENMAN, THAT'S THE
11 SUBSTANTIVE WIRE FRAUD COUNTS.

12 THE CONSPIRACY IS THE AGREEMENT TO COMMIT A CRIME, WIRE
13 FRAUD, AND HOLMES AND BALWANI AGREED TO DEFRAUD INVESTORS BY
14 FALSE STATEMENTS, AND THEY EACH HAD DIFFERENT ROLES IN THE
15 CONSPIRACY.

16 MS. HOLMES'S ROLE IN THE INVESTOR CONSPIRACY WAS TO
17 RECRUIT INVESTORS. SHE COMMUNICATED FALSE STATEMENTS DIRECTLY
18 TO INVESTORS LIKE TOLBERT. YOU HEARD THE TOLBERT PHONE CALL
19 WHEN HOLMES BRAGS ABOUT DOD OR MILITARY WORK THAT THERANOS DID.
20 THAT'S HOLMES FULFILLING HER ROLE IN THE CONSPIRACY.

21 MR. BALWANI ALSO HAD A ROLE IN THE INVESTOR CONSPIRACY.
22 THE FIRST THING HE DID WAS RUN THE LAB, THE CLIA LAB, BECAUSE
23 HAVING A CLIA LAB WAS VERY USEFUL IN RECRUITING INVESTORS.

24 YOU HEARD THAT INVESTORS THOUGHT THAT WAS PROOF THAT THE
25 TECHNOLOGY WORKED. SO WHEN THEY'RE INVESTING IN THERANOS, THEY

10:15AM 1 HAVE CONFIDENCE IN THEIR INVESTMENT IN THE COMPANY BECAUSE THEY
10:15AM 2 HAVE THIS CLIA LAB, THEY SEE A COPY OF THE CLIA LICENSE IN SOME
10:15AM 3 OF THE DOCUMENTS, THEY SEE COPIES OF PROFICIENCY TESTING
10:15AM 4 SCORES. SO BY RUNNING THE LAB, MR. BALWANI IS PLAYING A ROLE
10:15AM 5 IN THE INVESTOR CONSPIRACY BECAUSE THAT'S USEFUL TO RECRUIT
10:15AM 6 INVESTORS.

10:15AM 7 BUT THAT ISN'T THE ONLY ROLE HE PLAYED. MR. BALWANI
10:15AM 8 HIMSELF COMMUNICATED WITH INVESTORS JUST LIKE ELIZABETH HOLMES
10:15AM 9 DID. MR. BALWANI DIRECTLY COMMUNICATED WITH MENDENHALL. DO
10:15AM 10 YOU REMEMBER THE SUNDAY PHONE CALL WITH A TERSE DIRECT
10:15AM 11 STATEMENT?

10:15AM 12 BALWANI ALSO DIRECTLY COMMUNICATED WITH GROSSMAN.
10:16AM 13 BRIAN GROSSMAN TRAVELLED TO PALO ALTO ON SEVERAL OCCASIONS AND
10:16AM 14 EMAILS BACK AND FORTH WITH MR. BALWANI.

10:16AM 15 SO IT ISN'T AS THOUGH HOLMES IS THE ONLY ONE COMMUNICATING
10:16AM 16 DIRECTLY WITH INVESTORS. BALWANI IS DOING THAT, TOO.

10:16AM 17 AND NOTICE SOMETHING INTERESTING ABOUT THE FALSE
10:16AM 18 STATEMENTS WITH THE INVESTORS HERE. THE FALSE STATEMENTS ARE
10:16AM 19 NOT DIFFERENT. THEY HAVE LINKED UP. HOLMES AND BALWANI KNOW
10:16AM 20 WHAT THEY'RE GOING TO SAY TO INVESTORS BECAUSE IT'S NOT
10:16AM 21 COINCIDENCE, IT'S NOT AN ACCIDENT THAT GROSSMAN THINKS THEY'RE
10:16AM 22 NOT USING THIRD PARTY DEVICES, AND MENDENHALL THINKS THAT
10:16AM 23 THEY'RE NOT USING THIRD PARTY DEVICES, AND EISENMAN THINKS
10:16AM 24 THEY'RE NOT USING THIRD PARTY DEVICES. THEY ALL ARE HEARING
10:16AM 25 THIS RELATIVELY CONSISTENT STORY BECAUSE EVEN WHEN BALWANI IS

10:16AM 1 COMMUNICATING TO INVESTORS, OR EVEN WHEN HOLMES IS
10:16AM 2 COMMUNICATING TO INVESTORS, THEY KNOW WHAT EACH OTHER IS DOING,
10:16AM 3 AND THEY KNOW WHAT EACH OTHER IS SAYING.

10:16AM 4 MR. BALWANI'S ROLE IN THE INVESTOR FRAUD DOESN'T STOP JUST
10:16AM 5 WITH COMMUNICATING TO INVESTORS. HE ALSO WAS THE POINT PERSON
10:17AM 6 FOR THE WALGREENS RELATIONSHIP. AND YOU KNOW THE FALSE
10:17AM 7 STATEMENTS THAT WERE COMMUNICATED TO WALGREENS CAUSED WALGREENS
10:17AM 8 TO BELIEVE THAT THERANOS COULD ACTUALLY DO FINGERSTICK TESTING
10:17AM 9 AND HAVING THE RELATIONSHIP WITH WALGREENS WAS USEFUL TO
10:17AM 10 RECRUITING INVESTORS.

10:17AM 11 YOU HEARD MORE THAN ONE INVESTOR TELL YOU THAT THEY
10:17AM 12 THOUGHT THE RELATIONSHIP WITH WALGREENS WAS VERY IMPORTANT TO
10:17AM 13 THERANOS'S FUTURE AND BUSINESS SUCCESS. IT WAS A REVENUE
10:17AM 14 GENERATING OPPORTUNITY. AND IT MADE SENSE IF THERANOS WAS
10:17AM 15 GOING TO TEST BLOOD, INSTEAD OF BUILDING LOCATIONS TO TEST
10:17AM 16 BLOOD, GO INTO AN ALREADY ESTABLISHED BRAND, AND WALGREENS HAS
10:17AM 17 A GREAT BRAND, AND SO IT'S GOOD FOR THERANOS.

10:17AM 18 SO BY MR. BALWANI BEING THE POINT PERSON IN THE WALGREENS
10:17AM 19 RELATIONSHIP AND IN DECEIVING WALGREENS AND TELLING THEM THAT
10:17AM 20 THE VEIN DRAW IS GOING TO GET LOWER, JUST WAIT, EVEN THOUGH IT
10:17AM 21 NEVER DID, HE'S PLAYING A ROLE IN THE INVESTOR CONSPIRACY BY
10:18AM 22 DOING THAT.

10:18AM 23 HE ALSO COMMUNICATED FALSE STATEMENTS TO INVESTORS ON ONE
10:18AM 24 PARTICULAR TOPIC THAT WE'RE GOING TO TALK MORE ABOUT LATER:
10:18AM 25 FINANCIAL PROJECTIONS. YOU KNOW, MR. BALWANI WAS INVOLVED IN

10:18AM 1 THE FINANCES AT THERANOS. MS. YAM, MS. SPIVEY TOLD YOU THAT.
10:18AM 2 AND HE COMMUNICATED THESE TOPICS TO INVESTORS. HE'S THE ONE
10:18AM 3 THAT PROVIDED THE FALSE FINANCIAL PROJECTIONS, THE OUTRAGEOUS
10:18AM 4 \$140 MILLION IN REVENUE IN '14 AND A BILLION DOLLARS IN '15.

10:18AM 5 YOU KNOW THAT BALWANI HAD SEVERAL ROLES AT THERANOS
10:18AM 6 BECAUSE DAN EDLIN TOLD YOU SO. DO YOU REMEMBER MR. EDLIN WORE
10:18AM 7 BEING HATS AT THERANOS, SO HE HAD THE OPPORTUNITY TO OBSERVE
10:18AM 8 THE WORK THAT BOTH HOLMES AND BALWANI DID. AND HE TOLD YOU
10:18AM 9 THAT MR. BALWANI WAS INVOLVED IN THE SOFTWARE DEVELOPMENT. SO
10:18AM 10 WHEN THEY'RE USING THINGS LIKE -- DO YOU REMEMBER THE NULL
10:19AM 11 PROTOCOL? SOMETHING THEY USED TO SHIELD ERRORS DURING THE
10:19AM 12 DEMOS, MR. BALWANI RAN SOFTWARE.

10:19AM 13 HE WAS INVOLVED IN FINANCIAL MATTERS. SO WHEN INVESTORS
10:19AM 14 HEAR THESE PROJECTIONS, THAT'S BALWANI.

10:19AM 15 HE WAS THE POINT PERSON IN THE WALGREENS RELATIONSHIP.
10:19AM 16 EDLIN AND JHAVERI TOLD YOU THAT.

10:19AM 17 HE RAN THE CLIA LAB. BOTH BENNETT TOLD YOU THAT, AND
10:19AM 18 MR. EDLIN TOLD YOU THAT.

10:19AM 19 AND HE PLAYED A ROLE IN INVESTOR MEETINGS. MR. EDLIN SAID
10:19AM 20 I WASN'T PRESENT FOR THE INVESTOR MEETINGS, I WASN'T SITTING IN
10:19AM 21 ON THEM, SO I CAN'T TELL YOU WHAT HE SAID DURING THEM, BUT I
10:19AM 22 KNOW HE WAS PRESENT DURING INVESTOR MEETINGS.

10:19AM 23 YOU HEARD WHAT HE SAID FROM THE INVESTORS. YOU HEARD FROM
10:19AM 24 GROSSMAN, FOR INSTANCE, THE KIND OF STATEMENTS, OR
10:19AM 25 LISA PETERSON, THE KIND OF STATEMENTS THAT MR. BALWANI

DISCUSSED, THEY WERE FREQUENTLY ABOUT THE FINANCIALS.

YOU ALSO KNOW FROM THE TEXT MESSAGES THAT THEY BOTH PLAYED A ROLE IN THE CONSPIRACY. LOOK AT THIS FIRST ONE ON TOP THAT WAS IN JULY 15, 2015, MR. BALWANI IS TELLING MS. HOLMES, "I AM RESPONSIBLE FOR EVERYTHING AT THERANOS. ALL HAVE BEEN MY DECISIONS TOO."

IN THIS TEXT MESSAGE, MR. BALWANI ISN'T BRAGGING, HE'S NOT TAKING CREDIT FOR ALL OF THE GREAT SUCCESS THAT THERANOS HAS. HE'S ACKNOWLEDGING HIS ROLE IN THE FRAUD.

MR. BALWANI IS SAYING, I KNOW WE NEED REVENUE, I KNOW WE'VE DECEIVED INVESTORS AND PATIENTS TO GET IT, AND THESE HAVE BEEN MY DECISIONS ALSO.

AND THEN IN THIS CHAIN OF TEXT MESSAGES FROM 2012 THEY'RE BOTH ACKNOWLEDGING THE NEED FOR REVENUE. MR. BALWANI IS SAYING THAT HE MISSES HER, BUT THE BUSINESS CANNOT BE BUILT BY HOLMES OR BALWANI ALONE. THAT'S WHY THE UNIVERSE BROUGHT THEM TOGETHER.

THE FOURTH ONE DOWN. "WE HAVE TO WORK TOGETHER ON THE REV," OR REVENUE, "REVENUE PIECE."

MS. HOLMES IS SAYING -- IN 2012 MS. HOLMES IS SAYING WE NEED REVENUE. THE INVESTORS THAT ARE CHARGED IN THE CASE INVEST AT THE END OF 2013.

AND THEN FURTHER DOWN MR. BALWANI RESPONDS, "YOU ARE THE COMPANY. WE NEED REVENUE."

THEY BOTH KNOW IN 2012, BEFORE THE CHARGED INVESTOR WIRES,

10:21AM 1 THAT THERANOS NEEDS REVENUE.

10:21AM 2 YOU ALSO KNOW BECAUSE MANY WITNESSES TESTIFIED THAT THERE
10:21AM 3 WASN'T DISAGREEMENT BETWEEN HOLMES AND BALWANI. SO EDLIN HAD
10:21AM 4 THE OPPORTUNITY TO OBSERVE THEM WORK TOGETHER, AND THERE
10:21AM 5 WEREN'T THESE INSTANCES WHEN BALWANI WAS SAYING I'M UNHAPPY
10:21AM 6 WITH THAT APPROACH OR I DON'T THINK YOU SHOULD MAKE THAT
10:21AM 7 STATEMENT OR I NEED TO CORRECT SOMETHING THAT YOU SAID. THOSE
10:21AM 8 KIND OF THINGS DIDN'T HAPPEN.

10:21AM 9 IT WASN'T JUST EDLIN THOUGH. PANDORI, PETERSON, AND
10:21AM 10 GROSSMAN ALL HAD THE OPPORTUNITY TO OBSERVE BOTH OF THEM
10:21AM 11 WORKING TOGETHER AND SAID THAT THEY SPOKE WITH ONE VOICE
10:21AM 12 ESSENTIALLY. MORE EVIDENCE OF THE COLLABORATION BETWEEN THE
10:21AM 13 TWO OF THEM.

10:22AM 14 THERE WAS ALSO THIS PRACTICE AT THERANOS, WHEN ONE OF THEM
10:22AM 15 HANDLED AN ISSUE, TO FORWARD THE EMAIL AT THE END TO THE OTHER.
10:22AM 16 SOMETIMES AS A BLANK FORWARD, SOMETIMES WITH AN "FYI,"
10:22AM 17 SOMETIMES JUST WITH A STATEMENT, "WANTED TO MAKE SURE YOU SAW
10:22AM 18 THIS."

10:22AM 19 YOU SEE EMAIL AFTER EMAIL OF THIS OCCURRING. SO EVEN WHEN
10:22AM 20 THEY CARVED OUT SEPARATE RESPONSIBILITIES LIKE BALWANI
10:22AM 21 COMMUNICATING WITH MENDENHALL OR BALWANI WORKING WITH
10:22AM 22 WALGREENS, HOLMES WASN'T KEPT IN THE DARK ABOUT IT AND VICE
10:22AM 23 VERSA.

10:22AM 24 AND WHEN ONE OF THEM IS DEALING WITH AN ISSUE, YOU CAN SEE
10:22AM 25 EXAMPLE AFTER EXAMPLE WHERE AT THE VERY TOP OF THE CHAIN, THE

10:22AM 1 LAST EMAIL IS JUST FORWARDED FROM THE ONE WHO HAS HANDLING THE
10:22AM 2 ISSUE AS AN "FYI" TO THE OTHER.

10:22AM 3 THE SECOND ELEMENT FOR INVESTOR CONSPIRACY IS THAT THE
10:22AM 4 DEFENDANT BECAME A MEMBER OF THE CONSPIRACY KNOWING OF AT LEAST
10:22AM 5 ONE OF ITS OBJECTS AND INTENDING TO HELP ACCOMPLISH IT.

10:22AM 6 SO, FIRST, WHAT IS THE OBJECTIVE OF THE INVESTOR
10:23AM 7 CONSPIRACY? IT IS TO GET MONEY FROM INVESTORS THROUGH FRAUD.
10:23AM 8 HOW DO WE KNOW THAT SUNNY BALWANI HAD KNOWLEDGE OF THIS
10:23AM 9 OBJECTIVE? WELL, THE TEXT MESSAGES REVEAL HIS KNOWLEDGE THAT
10:23AM 10 THERANOS HAS A NEED FOR MONEY. YOU'VE SEEN IT IN A TEXT
10:23AM 11 MESSAGE I JUST SHOWED YOU, "WE NEED REVENUE IN 2012."

10:23AM 12 YOU ALSO KNOW IT BECAUSE MS. YAM WAS SHARING FINANCIALS
10:23AM 13 WITH SUNNY BALWANI. SO IT'S NOT ONLY IN THE TEXT MESSAGES.
10:23AM 14 MS. YAM TOLD YOU AND YOU HAVE SEEN IT IN EMAILS, MR. BALWANI IS
10:23AM 15 RECEIVING UPDATED WEEKLY CASH BALANCES SO THAT HE KNOWS WHEN
10:23AM 16 THERANOS IS RUNNING OUT OF MONEY.

10:23AM 17 AND HOW DO YOU KNOW THAT MR. BALWANI HAS AN INTENT TO
10:23AM 18 ACCOMPLISH THAT OBJECTIVE? WELL, AGAIN, THE OBJECTIVE IS TO
10:23AM 19 SHARE FALSE STATEMENTS WITH INVESTORS IN ORDER TO GET THEM TO
10:23AM 20 GIVE MONEY TO THERANOS.

10:23AM 21 YOU KNOW IT BECAUSE THERE'S AN INTENT THROUGHOUT THE
10:23AM 22 EMAILS. AND WE'RE GOING TO GO THROUGH MANY OF THE EMAILS.

10:24AM 23 BUT I WANT TO MAKE A MORE BROAD ARGUMENT TO YOU RIGHT NOW,
10:24AM 24 AND THAT IS THAT MR. BALWANI COMMUNICATED FALSE STATEMENTS TO
10:24AM 25 INVESTORS. THAT HAPPENED, AND YOU'VE SEEN THE EVIDENCE OF IT.

1 THE QUESTION OF INTENT IS A SEPARATE ONE. WHY DID HE?

2 WHAT WAS THE PURPOSE BEHIND THOSE COMMUNICATIONS?

3 IF IT WAS AN ACCIDENT, IF HE WAS COMMUNICATING FALSE
4 STATEMENTS TO INVESTORS, BUT NOT INTENTIONALLY BY ACCIDENT, YOU
5 WOULD EXPECT THOSE FALSE STATEMENTS TO FALL ON BOTH SIDES OF
6 THE LINE, AND BY THAT I MEAN SOME FALSELY OPTIMISTIC ABOUT
7 THERANOS'S FUTURE AND SOME FALSELY PESSIMISTIC. IF THESE WERE
8 NOT FALSE STATEMENTS COMMUNICATED WITH A PARTICULAR PURPOSE,
9 WITH AN INTENT IN MIND, BUT RATHER WERE COMMUNICATED
10 ACCIDENTALLY, YOU WOULD EXPECT SOME OF THEM TO DISCOURAGE
11 INVESTORS FROM INVESTING.

12 WELL, WHEN SUNNY BALWANI IS COMMUNICATING FALSE STATEMENTS
13 TO INVESTORS, THEY'RE ALWAYS FALLING ON ONE SIDE OF THE LINE.
14 THEY ALL HAPPEN TO BE THE KIND OF FALSE STATEMENTS THAT WOULD
15 CAUSE AN INVESTOR TO WANT TO INVEST IN THERANOS.

16 WHY IS THAT? BECAUSE THEY WERE DONE INTENTIONALLY.
17 BECAUSE THERE WAS A GOAL OR A TARGET IN MIND, AND HE KNOWS THAT
18 IF HE COMMUNICATED FALSELY PESSIMISTIC STATEMENTS ABOUT
19 THERANOS'S TECHNOLOGY, INVESTORS WOULDN'T WANT TO INVEST. IT'S
20 OBVIOUS. SO HE COMMUNICATES THE FALSELY POSITIVE ONES.

21 IN ADDITION TO ALL OF THE SPECIFIC INSTANCES THAT WE'RE
22 GOING TO GO THROUGH WHERE HE KNOWS THE TRUTH, BUT THE INVESTOR
23 IS TOLD SOMETHING DIFFERENT, THERE'S THIS MORE MACRO IDEA, THIS
24 BROAD IDEA THAT OF COURSE HE'S COMMUNICATING THESE TYPE OF
25 FALSE STATEMENTS FOR A PARTICULAR REASON, BECAUSE HIS GOAL IS

10:25AM 1 TO SAVE THERANOS BECAUSE HE KNOWS THAT THEY CAN'T GENERATE
10:25AM 2 SUFFICIENT REVENUE THROUGH HONESTY.

10:25AM 3 IN THE TEXT MESSAGES YOU SEE HOLMES AND BALWANI
10:25AM 4 COMMUNICATE WHEN THEY LAND INVESTOR FUNDS. IN HERE, HOLMES IS
10:25AM 5 TELLING BALWANI THAT FOLKS FROM THE WAL-MART FAMILY,
10:25AM 6 ALICE WALTON HAS JUST INVESTED \$50 MILLION, GREG PENNER
10:25AM 7 INVESTED \$100 MILLION, AND THEN RUPERT MURDOCH HAS INVESTED
10:26AM 8 OVER \$100 MILLION. AGAIN, THEY BOTH KNOW WHAT THE OBJECTIVE
10:26AM 9 IS, AND WHEN IT HAPPENS, THEY TALK ABOUT IT.

10:26AM 10 YOU ALSO KNOW ON SOME OCCASIONS BY BALWANI'S LACK OF
10:26AM 11 ACTION. HE COMMUNICATES WITH MENDENHALL WHEN MENDENHALL IS
10:26AM 12 CONSIDERING MAKING AN INVESTMENT.

10:26AM 13 AFTER MENDENHALL MAKES HIS INVESTMENT AND REACHES OUT FOR
10:26AM 14 FURTHER COMMUNICATION, BALWANI DOESN'T COMMUNICATE WITH HIM.

10:26AM 15 WHEN BALWANI COMMUNICATES WITH AN INVESTOR, IT'S FOR A
10:26AM 16 PURPOSE, AND THAT PURPOSE IS TO DECEIVE THE INVESTOR IN ORDER
10:26AM 17 TO GET MONEY.

10:26AM 18 THE SAME THING HAPPENS WITH EISENMAN. WHEN EISENMAN IS
10:26AM 19 COMMUNICATING WITH BALWANI ABOUT AN INVESTMENT, BALWANI WISHES
10:26AM 20 HIM HAPPY HOLIDAYS, A PROSPEROUS NEW YEAR, IS FRIENDLY AND
10:26AM 21 ENGAGING.

10:26AM 22 AFTER HE GETS EISENMAN'S MONEY, BALWANI SAYS ALL FUTURE
10:26AM 23 COMMUNICATIONS ARE GOING TO BE THROUGH COUNSEL. AGAIN, BALWANI
10:26AM 24 IS COMMUNICATING WITH INVESTORS WHEN IT SUITS HIM, WHEN IT'S
10:27AM 25 NECESSARY FOR A PURPOSE AND WITH INTENT.

10:27AM 1 I HAVE SUMMARIZED FOR YOU THE TYPES OF INTERACTIONS
10:27AM 2 BALWANI AND HOLMES HAD WITH THE VARIOUS INVESTORS BECAUSE, AS I
10:27AM 3 MENTIONED, THERE ARE SOME INVESTORS LIKE TOLBERT, BALWANI NEVER
10:27AM 4 COMMUNICATED WITH, AND I WANT YOU TO SEE THAT, TOO.

10:27AM 5 WITH PETERSON, THERE WERE IN PERSON -- THERE WAS AN
10:27AM 6 IN-PERSON MEETING. BOTH HOLMES AND BALWANI WERE PRESENT. AND
10:27AM 7 THAT WAS IN OCTOBER OF 2014.

10:27AM 8 THERE WERE TWO IN-PERSON MEETINGS THAT BALWANI WAS PRESENT
10:27AM 9 FOR WITH MR. MOSLEY IN OCTOBER OF 2014.

10:27AM 10 EISENMAN COMMUNICATED WITH HOLMES AND THEN RECEIVED THE
10:27AM 11 MENDENHALL SUMMARY EMAIL. SO REMEMBER, BALWANI TALKED TO
10:27AM 12 MENDENHALL, MENDENHALL SUMMARIZED THAT CONVERSATION, AND THEN
10:27AM 13 MENDENHALL EMAILED THAT SUMMARY, AND EISENMAN RECEIVES THAT
10:27AM 14 SUMMARY.

10:27AM 15 TOLBERT JUST COMMUNICATED WITH HOLMES.

10:27AM 16 LUCAS JUST COMMUNICATED WITH HOLMES. MULTIPLE
10:28AM 17 COMMUNICATIONS WITH MS. HOLMES.

10:28AM 18 GROSSMAN, SEVERAL IN-PERSON MEETINGS, HOLMES AND BALWANI,
10:28AM 19 AND ALSO EMAILS WITH BALWANI, HE ALSO GOT THE INVESTOR BINDER.
10:28AM 20 HE GOT THAT. GROSSMAN RECEIVED THAT DIRECTLY FROM BALWANI.

10:28AM 21 SO THAT WAS THE FIRST CONSPIRACY.

10:28AM 22 WE'RE NOW ON TO THE SECOND CONSPIRACY, THE CONSPIRACY TO
10:28AM 23 DEFRAUD PATIENTS. THE SAME TWO ELEMENTS: THE AGREEMENT AND
10:28AM 24 THEN KNOWLEDGE OF THE OBJECTIVE AND INTENT.

10:28AM 25 LET'S TALK ABOUT THE ROLES IN THE PATIENT CONSPIRACY.

10:28AM 1 FIRST, THE AGREEMENT HERE WAS TO GET MONEY FROM PATIENTS,
10:28AM 2 A MUCH SMALLER AMOUNT PER PATIENT. YOU KNOW, THEY'RE GETTING
10:28AM 3 MILLIONS OF DOLLARS FROM EACH INVESTOR. THE PATIENT CONSPIRACY
10:28AM 4 IS BUILT ON NUMBERS. THEY'RE GETTING MUCH SMALLER AMOUNTS.
10:28AM 5 THE GOAL IS TO GET, THE AMOUNT YOU WOULD GET JUST FROM AN
10:29AM 6 INDIVIDUAL BLOOD TEST, BUT HERE IS THE VOLUME, OF COURSE.
10:29AM 7 FALSE STATEMENTS BROADLY COMMUNICATED TO PATIENTS WITH THE GOAL
10:29AM 8 THAT A LARGE NUMBER OF PATIENTS WOULD PURCHASE BLOOD TESTING
10:29AM 9 FROM THERANOS, AND THEY EACH PLAYED DIFFERENT ROLES IN IT.

10:29AM 10 HOLMES RECRUITED PATIENTS BY MAKING FALSE STATEMENTS BOTH
10:29AM 11 IN THE PRESS, AND ON THE WEBSITE, AND INPATIENT BROCHURES. AND
10:29AM 12 YOU'VE SEEN THOSE FALSE STATEMENTS, THINGS LIKE THERANOS'S
10:29AM 13 BLOOD TESTS HAVE THE HIGHEST LEVELS OF ACCURACY.

10:29AM 14 BALWANI ALSO PLAYED A ROLE IN THE PATIENT CONSPIRACY. HE
10:29AM 15 RAN THE CLIA LAB. THAT'S WHERE THE PATIENT BLOOD WAS TESTED.
10:29AM 16 HE ALSO REMOVED DISSENT WITHIN THE LAB, SO WHEN LAB DIRECTORS
10:29AM 17 LIKE ROSENDORFF COMPLAINED TOO MUCH, RAISED TOO MANY ISSUES,
10:29AM 18 BALWANI SUGGESTS FIRING DR. ROSENDORFF, AND THEN HE REPLACES
10:29AM 19 HIM, HE HIRED THESE ABSENTEE LAB DIRECTORS.

10:30AM 20 BALWANI KNOWS THAT THE WAY TO KEEP THE PATIENT FRAUD GOING
10:30AM 21 IS TO HAVE PEOPLE RUNNING THE LAB WHO DO NOT EXPRESS DISSENT,
10:30AM 22 WHO DO NOT QUESTION THE TESTING, WHO DO FIND RAISE ISSUES, AND
10:30AM 23 HE FINDS THAT IN THE ABSENTEE LAB DIRECTORS OF DHAWAN AND
10:30AM 24 SAWYER.

10:30AM 25 THE SECOND ELEMENT FOR PATIENT CONSPIRACY IS THE SAME

10:30AM 1 IDEA, THE KNOWLEDGE OF THE OBJECTIVE, MEMBER ACTIVE IN THE
10:30AM 2 CONSPIRACY AND THE INTENT. AND WE'RE GOING TO COVER A LOT OF
10:30AM 3 THESE TOPICS THROUGHOUT EVEN THE SUBSTANTIVE WIRE FRAUD COUNTS,
10:30AM 4 BUT HERE I WANT TO POINT OUT TO YOU THAT YOU KNOW THAT BALWANI
10:30AM 5 HAS KNOWLEDGE OF THIS OBJECTIVE, BECAUSE IT'S IN THE TEXT
10:30AM 6 MESSAGES. HE KNOWS THAT THE LAB IS A DISASTER, AND IT'S IN THE
10:30AM 7 EMAILS. HE KNOWS THAT THE TESTS IN THE LAB ARE NOT GENERATING
10:30AM 8 ACCURATE RESULTS, AND THEY'RE STILL RUNNING THEM, AND PEOPLE
10:30AM 9 ARE GOING TO -- WITNESS TESTIMONY, CHEUNG, ROSENDORFF, PANDORI
10:31AM 10 ARE ALL GOING TO BALWANI DIRECTLY AND SAYING OUR TESTING IS
10:31AM 11 INACCURATE. SO HE KNOWS ABOUT THE PROBLEMS IN THE LAB.

10:31AM 12 HE KNOWS THAT THEY'RE COMMUNICATING THESE FALSE STATEMENTS
10:31AM 13 ABOUT ACCURACY. IT'S OBVIOUS, IF THEY DIDN'T COMMUNICATE
10:31AM 14 STATEMENTS ABOUT ACCURACY, NO PATIENT IS GOING TO GET TESTING
10:31AM 15 AT THERANOS.

10:31AM 16 HERE IS THE TEXT ABOUT THE LAB BEING A DISASTER. I'M SURE
10:31AM 17 YOU REMEMBER THIS ONE. BUT YOU ALSO KNOW THAT FURTHER DOWN,
10:31AM 18 BALWANI'S KNOWLEDGE OF THE PROBLEMS IS EVEN MORE NUANCED. IT
10:31AM 19 ISN'T SOME GENERAL STATEMENT ABOUT THE LAB BEING A DISASTER.
10:31AM 20 HE'S SAYING THAT WE WERE SUPPOSED TO HAVE BUILT THERANOS TO
10:31AM 21 REMOVE HUMAN JUDGMENT, THAT IN LAB TESTING SOME OF THE PROBLEMS
10:31AM 22 COME FROM HUMAN ERROR, AND THE GOAL WAS TO REMOVE THAT PART OF
10:31AM 23 THE PROBLEMS IN LAB TESTING. BUT, IN FACT, AT THERANOS, IT
10:31AM 24 EXACERBATED THAT PROBLEM. IT WAS EVEN WORSE. THERE WAS MORE
10:31AM 25 HUMAN JUDGMENT BEING USED.

10:31AM 1 REMEMBER THIS IDEA ABOUT REMOVING OUTLIERS. YOU HEARD
10:32AM 2 TESTIMONY ABOUT THIS A FEW MONTHS AGO. AT THERANOS, AN EDISON
10:32AM 3 DEVICE WOULD GENERATE TWO RESULTS. SO IF YOU RAN A CHOLESTEROL
10:32AM 4 TEST ON AN EDISON DEVICE, THE BOX WOULD KICK OUT TWO NUMBERS.

10:32AM 5 AND DR. ROSENDORFF TOLD YOU THAT AT THERANOS IT WOULD RUN
10:32AM 6 EACH TEST THREE TIMES ON THREE DEVICES. SO IF YOU WANTED TO
10:32AM 7 GET A CHOLESTEROL TEST ON AN EDISON DEVICE, YOU WOULD RUN IT ON
10:32AM 8 THREE DIFFERENT EDISONS TO GET SIX DIFFERENT CHOLESTEROL
10:32AM 9 SCORES.

10:32AM 10 AND THEN THEY APPLIED THIS MANUAL OUTLIER REMOVAL PROCESS,
10:32AM 11 WHICH MEANT THAT YOU COULD DELETE TWO OF THOSE SIX SCORES
10:32AM 12 LEAVING YOU WITH FOUR SCORES, AND THEN YOU COULD USE THOSE FOUR
10:32AM 13 SCORES TO COME UP WITH YOUR CHOLESTEROL RESULT, A THING YOU
10:32AM 14 WOULD REPORT TO A PATIENT.

10:32AM 15 BALWANI KNOWS THAT. AND WHAT HE'S SAYING HERE IS THAT
10:32AM 16 WE'RE USING MORE HUMAN JUDGMENT IN THE PROCESS.

10:32AM 17 ROSENDORFF TOLD YOU THAT PROCESS THAT I JUST DESCRIBED,
10:33AM 18 THE OUTLIER REMOVAL PROCESS, IS NOT THE WAY THAT THE SIEMENS
10:33AM 19 MACHINE WORKS, AND THAT WAS A UNIQUELY THERANOS CREATION IN
10:33AM 20 RESPONSE TO UNIQUELY THERANOS PROBLEMS.

10:33AM 21 BALWANI ALSO KNOWS THAT PATIENTS WILL PAY CASH. AGAIN, I
10:33AM 22 ACKNOWLEDGE TO YOU IT'S SMALL AMOUNTS OF CASH. IT'S NOT THE
10:33AM 23 MILLIONS OF DOLLARS THAT INVESTORS ARE GIVING, BUT IT'S A
10:33AM 24 VOLUME BUSINESS.

10:33AM 25 AND BALWANI KNOWS THAT THE PLACE TO -- THE REASON TO PITCH

10:33AM 1 INVESTORS IS TO GET CASH FROM INVESTORS. THERANOS IS
10:33AM 2 ADVERTISING TO INVESTORS -- I'M SORRY, TO PATIENTS IN ORDER TO
10:33AM 3 GET THEM TO GIVE THERANOS MONEY, AND THAT'S THROUGHOUT THOSE
10:33AM 4 DOCUMENTS.

10:33AM 5 YOU ALSO KNOW THAT THERANOS, HOLMES AND BALWANI, WERE
10:33AM 6 WARNED. THEY WERE ADVISED THAT CERTAIN STATEMENTS ON THEIR
10:33AM 7 WEBSITE WERE INACCURATE, WERE MISLEADING, AND YOU SAW THAT
10:34AM 8 THOSE STATEMENTS, EVEN AFTER THE WARNING, ARE STILL APPEARING
10:34AM 9 ON THE WEBSITE. THINGS LIKE THE "HIGHEST RANGE OF ACCURACY,"
10:34AM 10 THE "FULLEST RANGE OF TEST," "HIGHEST QUALITY," THESE
10:34AM 11 STATEMENTS ARE INACCURATE. HOLMES AND BALWANI WERE TOLD AND
10:34AM 12 THEY STILL APPEARED.

10:34AM 13 AND DO YOU KNOW WHY THEY STILL APPEARED? TO DUPE, TO
10:34AM 14 RECRUIT PATIENTS.

10:34AM 15 DAN EDLIN ALSO TOLD YOU THAT THERANOS HAD A COMPANY, A
10:34AM 16 MARKETING FIRM CALLED CHIAT/DAY THAT THEY HIRED TO CREATE THE
10:34AM 17 THERANOS ADVERTISING OR MARKETING MATERIALS. AND THERE WERE
10:34AM 18 ONLY TWO PEOPLE IN THE COMPANY WHO WERE AUTHORIZED TO APPROVE A
10:34AM 19 COPY OF WHAT CHIAT/DAY CREATED AND THEN WOULD GET PUBLISHED.
10:34AM 20 THE ONLY TWO PEOPLE AT THERANOS WHO WERE AUTHORIZED TO APPROVE
10:34AM 21 THAT COPY WERE HOLMES AND BALWANI.

10:34AM 22 AND YOU SAW EVEN WITH WARNINGS LIKE REPLACE "HIGHEST
10:35AM 23 QUALITY" WITH "HIGH QUALITY," IT'S STILL APPEARING.

10:35AM 24 "HIGH LEVELS OF QUALITY" OR "HIGHEST LEVELS OF QUALITY ARE
10:35AM 25 STILL APPEARING IN THE THERANOS OUTWARD FACING, THIRD PARTY

10:35AM 1 FACING DOCUMENTS LIKE ON THE WEBSITE, EVEN THOUGH THEY WERE
10:35AM 2 WARNED NOT TO, BECAUSE THAT'S HOW THEY WOULD GET PATIENTS.

10:35AM 3 THAT'S THE CONSPIRACY COUNTS, COUNTS ONE AND TWO.

10:35AM 4 WE'RE NOW MOVING INTO THE WIRE FRAUD, THE SUBSTANTIVE WIRE
10:35AM 5 FRAUD COUNTS. WE'LL START WITH THE SUBSTANTIVE WIRE FRAUD
10:35AM 6 COUNTS AS TO INVESTORS.

10:35AM 7 WIRE FRAUD HAS FOUR ELEMENTS THAT THE GOVERNMENT MUST
10:35AM 8 PROVE. THE FIRST IS THAT MR. BALWANI KNOWINGLY PARTICIPATED IN
10:35AM 9 A SCHEME OR PLAN TO DEFRAUD OR A SCHEME OR PLAN FOR OBTAINING
10:35AM 10 MONEY OR PROPERTY BY FALSE REPRESENTATIONS.

10:35AM 11 AND WHEN I TALK TO YOU ABOUT THIS, I'M GOING TO ACTUALLY
10:35AM 12 DIVIDE THIS INTO TWO. WE'LL TALK ABOUT THE EXISTENCE OF A
10:36AM 13 SCHEME OR PLAN, AND THEN SEPARATELY WE'LL TALK ABOUT THE
10:36AM 14 EVIDENCE SHOWING THAT MR. BALWANI HAS KNOWLEDGE OF THAT SCHEME
10:36AM 15 OR PLAN.

10:36AM 16 THE SECOND ELEMENT IS WHAT IS CALLED MATERIALITY, THE
10:36AM 17 FALSE STATEMENTS THAT WERE MADE TO INVESTORS NEEDED TO MATTER.
10:36AM 18 THEY NEEDED TO BE MATERIAL.

10:36AM 19 THE THIRD ELEMENT IS THAT MR. BALWANI ACTED WITH THE
10:36AM 20 INTENT TO DEFRAUD.

10:36AM 21 AND THE FINAL ELEMENT IS WHAT WE CALL INTERSTATE NEXUS,
10:36AM 22 THE WIRE ITSELF CROSSED STATE LINES. SO WHEN AN INVESTOR
10:36AM 23 INVESTED MONEY BY AN ELECTRONIC WIRE, THAT WIRE ITSELF CROSSED
10:36AM 24 STATE LINES. THAT'S ONE OF THE REASONS THAT YOU'VE COME TO
10:36AM 25 FEDERAL COURT FOR THE TRIAL.

10:36AM 1 AND AT THE END OF THE GOVERNMENT'S CASE WHEN THE
10:36AM 2 GOVERNMENT RESTED, YOU HEARD THE JUDGE READ TO YOU A
10:36AM 3 STIPULATION OF THE PARTIES. WE'LL TALK ABOUT THAT LATER. THE
10:36AM 4 PARTIES STIPULATED THAT CERTAIN WIRES IN THE CASE CROSSED STATE
10:36AM 5 LINES. SO YOU CAN ACCEPT THAT AS TRUE.

10:36AM 6 THERE ARE SIX SPECIFIC WIRES THAT MAKE UP THE WIRE FRAUD
10:37AM 7 COUNTS IN THE INDICTMENT. AND ON YOUR VERDICT FORM YOU WILL
10:37AM 8 SEE THE DOLLAR AMOUNT. SO COUNT THREE ON THE VERDICT FORM WILL
10:37AM 9 INVOLVE A WIRE ON DECEMBER 30TH OF 2013, \$99,000. THE VERDICT
10:37AM 10 FORM WILL NOT SAY THE INVESTOR'S NAME. SO I'M GOING TO ASK
10:37AM 11 YOU, AT LEAST ONE OF YOU, TO WRITE DOWN THE NAMES SO THAT WHEN
10:37AM 12 YOU'RE DELIBERATING, YOU RETURN THE VERDICT YOU MEAN TO REPORT.

10:37AM 13 IF YOU THINK BALWANI IS GUILTY OF THE EISENMAN COUNT, YOU
10:37AM 14 SHOULD KNOW THAT EISENMAN IS COUNT THREE.

10:37AM 15 IF YOU THINK HE'S NOT GUILTY OF THE LUCAS COUNT, YOU
10:37AM 16 SHOULD KNOW THAT LUCAS IS COUNT FOUR SO THAT YOU CAN WRITE DOWN
10:37AM 17 ON THE VERDICT FORM "GUILTY" OR "NOT GUILTY" NEXT TO THE LINE
10:37AM 18 THAT YOU MEAN TO RETURN THAT VERDICT.

10:37AM 19 AGAIN, THE COUNTS WILL APPEAR, THE DATES WILL APPEAR, THE
10:38AM 20 DOLLAR AMOUNTS WILL APPEAR, BUT NOT THE INVENTOR NAME. I'LL
10:38AM 21 LEAVE IT UP JUST FOR A MOMENT.

10:38AM 22 THE COURT: MR. SCHENK, MAYBE WE'LL ASK THE JURY TO
10:38AM 23 STAND.

10:38AM 24 IF YOU WOULD LIKE TO JUST STAND FOR JUST A MOMENT.

10:38AM 25 MR. SCHENK: THANK YOU.

10:38AM 1 THE COURT: WOULD YOU LIKE TO STAND FOR JUST A
10:38AM 2 MOMENT, FEEL FREE, LADIES AND GENTLEMEN, FOR 30 SECONDS.

10:38AM 3 (STRETCHING.)

10:38AM 4 THE COURT: THANK YOU.

10:38AM 5 MR. SCHENK: THANK YOU, YOUR HONOR.

10:38AM 6 LET ME ALSO SAY, I AM GOING TO DO MY BEST TO KEEP ANY EYE
10:39AM 7 ON THE CLOCK AND AROUND OUR NORMAL BREAK TIME, I'LL ASK THE
10:39AM 8 COURT IF THAT'S AN APPROPRIATE TIME.

10:39AM 9 BUT IF ANYBODY NEEDS A BREAK, DON'T FEEL LIKE BECAUSE THIS
10:39AM 10 IS CLOSING, YOU CAN'T RAISE YOUR HAND AND ASK FOR A BREAK. THE
10:39AM 11 SAME RULES APPLY. IF YOU NEED A BREAK, LET'S TAKE IT. I'LL
10:39AM 12 KNOW WHAT YOU MEAN IF YOU RAISE YOUR HAND.

10:39AM 13 SO LET'S GO THROUGH STARTING WITH THE CATEGORIES OF FALSE
10:39AM 14 STATEMENTS. INVESTORS INVESTED IN THERANOS BECAUSE THEY HEARD
10:39AM 15 FROM HOLMES AND BALWANI THINGS THAT WEREN'T TRUE, AND THESE
10:39AM 16 THINGS FIT INTO DIFFERENT CATEGORIES. THERE WERE CATEGORIES OR
10:39AM 17 BUCKETS OF FALSE STATEMENTS THAT THE INVESTORS HEARD, AND FROM
10:39AM 18 THOSE THEY MADE THE DECISION, INVESTORS MADE THE DECISION TO
10:39AM 19 INVEST.

10:39AM 20 THERE'S A NUMBER OF DIFFERENT CATEGORIES OF FALSE
10:39AM 21 STATEMENTS. AND THE FIRST ONE IS ABOUT THE CAPABILITIES OF THE
10:39AM 22 TECHNOLOGY, THAT IT WOULD TEST BLOOD BY FINGERSTICK, THAT IT
10:39AM 23 OFFERED THE FULL RANGE OF TESTS, STATEMENTS ABOUT ACCURACY AND
10:39AM 24 RELIABILITY, AND THAT THEY REMOVED HUMAN ERROR. A LOT FITS
10:40AM 25 WITHIN THIS FIRST BUCKET, BUT BROADLY SPEAKING, INVESTORS

10:40AM 1 THOUGHT THAT THE THERANOS TECHNOLOGY, THE BLOOD TESTING
10:40AM 2 TECHNOLOGY, COULD DO ONE THING OR ANOTHER THAT IT COULD NOT DO.

10:40AM 3 BUT THE FALSE STATEMENTS THAT INVESTORS HEARD WERE NOT
10:40AM 4 LIMITED JUST TO THE CAPABILITIES OF THE THERANOS TECHNOLOGY.
10:40AM 5 INVESTORS ALSO HEARD AND INVESTED BECAUSE THEY THOUGHT THERANOS
10:40AM 6 WAS FINANCIALLY STABLE AND THOUGHT IT WAS GENERATING REVENUE.

10:40AM 7 INVESTORS HEARD DURING MISLEADING DEMOS, MANY OF THESE
10:40AM 8 FALSE STATEMENTS, BUT ALSO THINGS LIKE THIS BOX HERE THAT IS IN
10:40AM 9 THE ROOM IS THE WAY WE TEST OUR BLOOD. OUR TECHNOLOGY INVOLVES
10:40AM 10 THIS DEVICE RIGHT HERE WHEN YOU HEARD THAT THEY RAN SOFTWARE ON
10:40AM 11 THAT DEVICE CALLED THE NULL PROTOCOL THAT WAS USED TO SHIELD
10:40AM 12 ERRORS. WHEN THE BOX WOULDN'T WORK, THE PERSON IN THE ROOM,
10:40AM 13 THE INVESTOR IN THE ROOM WOULDN'T SEE IT FAIL, AND, THEREFORE,
10:40AM 14 THE DEMOS WERE USED TO DECEIVE.

10:40AM 15 THERE ARE ADDITIONAL CATEGORIES OF FALSE STATEMENTS.

10:41AM 16 INVESTORS THOUGHT THAT THE WALGREENS RELATIONSHIP WAS
10:41AM 17 GOING WELL. YOU KNOW, BUT THERANOS WAS BEING TOLD WE'RE NOT
10:41AM 18 GOING TO EXPAND FURTHER OUTSIDE OF ARIZONA UNTIL YOU GET THESE
10:41AM 19 VENOUS DRAWS UNDER CONTROL. THE INVESTORS DIDN'T KNOW THAT.

10:41AM 20 THE INVESTORS HEARD THAT THERANOS'S TECHNOLOGY HAD BEEN
10:41AM 21 DEPLOYED BY THE DEPARTMENT OF DEFENSE ON THE BATTLEFIELD, WAS
10:41AM 22 SAVING SOLDIERS' LIVES, WAS IN AFGHANISTAN, WAS ON MEDEVAC
10:41AM 23 HELICOPTERS, ALL KINDS OF THINGS.

10:41AM 24 YOU HEARD FROM DAN EDLIN THAT THAT WASN'T TRUE, THAT THAT
10:41AM 25 WAS NOT THE WORK THAT THERANOS WAS DOING WITH THE DEPARTMENT OF

1 DEFENSE, BUT INVESTORS DIDN'T KNOW THAT.

2 THE INVESTORS HEARD THAT THERANOS DID NOT BUY DEVICES FROM
3 THIRD PARTIES; THAT THEY VERTICALLY INTEGRATED THEIR
4 MANUFACTURING; THAT THERANOS WAS MAKING AND USING ITS OWN
5 TECHNOLOGY. YOU KNOW THAT WASN'T TRUE. THEY WEREN'T JUST
6 BUYING SIEMENS DEVICES OR DEVICES MANUFACTURED BY OTHER
7 COMPANIES, THEY WERE ALSO MODIFYING SOME OF THOSE DEVICES.
8 INVESTORS DIDN'T KNOW THAT.

9 INVESTORS HEARD THAT THERANOS'S TECHNOLOGY HAD BEEN
10 VALIDATED BY PHARMACEUTICAL COMPANIES. WE'LL LOOK AT THAT
11 STATEMENT. "TEN OF THE FIFTEEN LARGEST PHARMACEUTICAL
12 COMPANIES." INVESTORS THOUGHT I'M NOT A SCIENTIST, BUT IT SURE
13 SEEMS GOOD TO ME THAT IT'S BEEN VALUED BY ITS WORK WITH
14 PHARMACEUTICAL COMPANIES.

15 BUT YOU HEARD THAT THE PHARMACEUTICAL COMPANIES DID NOT
16 VALIDATE THERANOS'S TECHNOLOGY.

17 AND FINALLY, MANY OF THESE FALSE STATEMENTS OF THE
18 CATEGORIES THAT WE JUST TALKED ABOUT APPEARED IN ARTICLES IN
19 THE MEDIA AND THEN THERANOS TOOK THOSE ARTICLES AND SENT THEM
20 TO INVESTORS, EITHER DIRECTLY IN EMAILS OR PUT THEM INTO THE
21 INVESTOR BINDERS AND SENT THE BINDER TO INVESTORS.

22 AND INVESTORS NOT ONLY RELIED ON THE DIRECT FALSE
23 STATEMENTS THAT THEY HEARD FROM HOLMES AND BALWANI, BUT THEN
24 THEY RELIED ON THE CORROBORATION, THEY RELIED ON THE STATEMENT
25 ALSO APPEARING IN THE MEDIA THAT THEY HAD RECEIVED FROM

1 THERANOS.

2 THE SOURCES OF THESE FALSE STATEMENTS WERE VARIED. SOME
3 INVESTORS HEARD THEM OR READ THEM IN INVESTOR BINDERS. SOME
4 INVESTORS SAW THEM ON THERANOS'S WEBSITE. SOME OF THEM READ
5 THEM OR HEARD OF THEM IN INTERVIEWS IN THE MEDIA AS I JUST
6 TALKED TO YOU ABOUT. AND SOME OF THEM HEARD DIRECTLY FROM
7 BALWANI TO INVESTORS.

8 SO THERE ARE CATEGORIES OF FALSE STATEMENTS, AND IN THE
9 WAYS THAT INVESTORS HEARD THE FALSE STATEMENTS ITSELF WERE
10 VARIED. THE INVESTORS HEARD THEM IN DIFFERENT WAYS.

11 LET'S LOOK AT SOME OF THE FALSE STATEMENTS. HERE YOU SEE
12 IN THE INVESTOR BINDER, INVESTORS READING THAT "THERANOS'S
13 PROPRIETARY, PATENTED TECHNOLOGY RUNS COMPREHENSIVE BLOOD TESTS
14 FROM A FINGERSTICK AND TESTS FROM MICRO-SAMPLES OF OTHER
15 MATRICES, AND GENERATES SIGNIFICANTLY HIGHER INTEGRITY DATA
16 THAN CURRENTLY POSSIBLE."

17 AND THE NOTICE IN THE LOWER RIGHT CORNER, I'VE PUT A
18 LITTLE CHART THAT SHOWS YOU IN WHICH INVESTOR BINDER YOU CAN
19 FIND THIS DOCUMENT, THIS SLIDE.

20 SO THIS SLIDE LANDED ON DAN MOSLEY'S DESK, IT LANDED ON
21 LISA PETERSON'S DESK, AND ON RUPERT MURDOCH'S DESK. AND THE
22 REASON MURDOCH IS IMPORTANT IS I'M GOING TO SHOW YOU IN A
23 MOMENT A TEXT MESSAGE WHERE HOLMES AND BALWANI ARE TALKING
24 ABOUT THE CONTENT OF THE MURDOCH BINDER.

25 SO BALWANI IS NOT ONLY ON OCCASION SENDING THE INVESTOR

10:44AM 1 BINDERS LIKE TO PETERSON OR GROSSMAN, BUT ALSO IN THE TEXT
10:44AM 2 MESSAGES THEY'RE TALKING ABOUT THE CONTENT OF INVESTOR BINDERS.
10:44AM 3 SO THESE BINDERS ARE NOT GOING OUT THE DOOR BLIND TO OR BALWANI
10:44AM 4 IS BLIND OF THEIR CONTENT.

10:45AM 5 THE INVESTOR BINDERS ALSO SAY THINGS LIKE "THERANOS RUNS
10:45AM 6 ANY TESTS AVAILABLE IN CENTRAL LABORATORIES, AND PROCESSES ALL
10:45AM 7 SAMPLE TYPES," UNDER A PICTURE OF A FINGERSTICK, EVEN THE
10:45AM 8 PICTURE IS DESIGNED TO DEFRAUD. "THERANOS PROVIDES THE HIGHEST
10:45AM 9 LEVEL OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN OUR PRE-
10:45AM 10 AND POST-ANALYTIC PROCESSES, ENSURING THE HIGHEST LEVELS OF
10:45AM 11 ACCURACY AND PRECISION."

10:45AM 12 AND THEN NOTICE THE THREE INVESTORS RECEIVE THIS, MOSLEY,
10:45AM 13 PETERSON, MURDOCH, AND ALSO BRIAN GROSSMAN, IT'S THIS SLIDE,
10:45AM 14 AND THE ONE ON THE RIGHT REFERENCES THE "HIGHEST LEVELS OF
10:45AM 15 ACCURACY." AND THAT CONCEPT IS REPEATED FURTHER DOWN.

10:45AM 16 "HIGHEST LEVELS OF ACCURACY. "IT DRAMATICALLY MINIMIZES
10:45AM 17 HUMAN PROCESSING, THE CAUSE OF MOST LAB ERRORS." WELL, WE JUST
10:45AM 18 TALKED ABOUT THAT.

10:46AM 19 MANUAL OUTLIER REMOVAL PROCESS. THEY'RE NOT REDUCING
10:46AM 20 HUMAN ERROR, THEY'RE ACTUALLY COMPOUNDING IT, DOING MORE THAN
10:46AM 21 WHAT EVEN THE STANDARD THIRD PARTY DEVICES.

10:46AM 22 SO THE FIRST CATEGORY WAS STATEMENTS ABOUT THE TECHNOLOGY,
10:46AM 23 THE CAPABILITIES OF THE TECHNOLOGY. THERE ARE ALSO FALSE
10:46AM 24 STATEMENTS ABOUT FINANCIAL STABILITY.

10:46AM 25 IN THE BACKGROUND YOU SEE THE LISA PETERSON FINANCIAL

10:46AM 1 PROJECTIONS THAT SHE RECEIVED. IN ADDITION TO JUST THE BOTTOM
10:46AM 2 LINE NUMBERS, 100 MILLION AND A BILLION DOLLARS IN REVENUE,
10:46AM 3 IT'S BROKEN OUT. SO CERTAIN AMOUNT OF MILLIONS FROM VARIOUS
10:46AM 4 SOURCES, AND THE SOURCES ARE LISTED, RETAIL PHARMACY,
10:46AM 5 PHYSICIAN'S OFFICES, HOSPITALS.

10:46AM 6 BUT THEN WHEN YOU GO THROUGH AND ASK LISA PETERSON WHAT
10:46AM 7 SHE HEARD. SHE NEVER HEARD THEY HAD NO REVENUE FROM THESE
10:46AM 8 SOURCES.

10:46AM 9 MS. YAM, MS. SPIVEY, WHEN SHE WAS ON THE STAND, WENT
10:46AM 10 THROUGH AND TOLD YOU WHAT THERANOS'S TRUE REVENUE WAS FROM
10:47AM 11 THESE SOURCES IN THOSE YEARS, BUT LISA PETERSON THOUGHT
10:47AM 12 THERANOS WAS GENERATING THIS REVENUE IN '14 AND EXPECTED TO IN
10:47AM 13 '15.

10:47AM 14 THERANOS DID MISLEADING DEMONSTRATIONS TO WALGREENS. DO
10:47AM 15 YOU REMEMBER WHEN JHAVERI WAS ON THE STAND, HE TOLD YOU THAT IN
10:47AM 16 AUGUST OF 2013, SO JUST WEEKS BEFORE THE LAUNCH, THE FIRST
10:47AM 17 PATIENTS COMING TO THE WALGREENS STORE IN SEPTEMBER, JHAVERI
10:47AM 18 AND OTHERS FROM WALGREENS GO TO THERANOS AND GET A
10:47AM 19 DEMONSTRATION. THEY GET A FINGERSTICK, AND THEY EXPECT THEIR
10:47AM 20 BLOOD IS GOING TO BE DRAWN ON THE EDISON DEVICE, BECAUSE THAT'S
10:47AM 21 WHAT THEY THINK THEY'VE SIGNED UP FOR. THAT'S WHAT THEY THINK
10:47AM 22 THERANOS IS DOING.

10:47AM 23 AND THEN MR. BALWANI -- I'M SORRY, AND THEN MR. JHAVERI
10:47AM 24 SEES AN INTERNAL EMAIL, AND YOU SEE IT HERE, THAT SAYS THAT
10:47AM 25 THEY JUST STARTED TO DO THE ADVIA RUN.

10:47AM 1 SO THERANOS DID A DEMO FOR WALGREENS WHERE THE WALGREENS
10:48AM 2 FOLKS LIKE JHAVERI BELIEVE THEIR BLOOD IS BEING TESTED ON AN
10:48AM 3 EDISON DEVICE, BUT, IN FACT, IT'S BEING TESTED ON A SIEMENS
10:48AM 4 ADVIA DEVICE.

10:48AM 5 PETERSON RECEIVED THESE MISLEADING PROJECTIONS. AND WHAT
10:48AM 6 IS MISLEADING HERE IS THE 900 LOCATIONS. MR. BALWANI EXPLAINED
10:48AM 7 THAT IN MEETINGS WITH HOLMES -- I'M SORRY, IN MEETINGS WITH
10:48AM 8 MS. PETERSON, HE WAS TRANSPARENT. YOU'VE HEARD THIS ARGUMENT
10:48AM 9 FROM THE DEFENSE. ONE, THESE WERE PROJECTIONS, AND, TWO, THEY
10:48AM 10 REVEALED THE UNDERLYING ASSUMPTIONS BEHIND THE PROJECTIONS. SO
10:48AM 11 HOW COULD THEY BE MISLEADING?

10:48AM 12 AND I WANT TO COVER THIS MORE FOR YOU A LITTLE BIT LATER,
10:48AM 13 BUT FOR NOW, THE UNDERLYING ASSUMPTION BEHIND THE \$1 BILLION OF
10:48AM 14 REVENUE IS 900 LOCATIONS WITH WALGREENS.

10:48AM 15 MR. BALWANI KNOWS THAT ISN'T GOING TO HAPPEN BECAUSE
10:48AM 16 YOU'VE SEEN THE MONTHLY MEETING MINUTES BETWEEN WALGREENS AND
10:49AM 17 THERANOS WHERE THEY'RE TRACKING VENOUS DRAWS, WHERE MR. BALWANI
10:49AM 18 HAS TO TELL WALGREENS THAT HE HAS 90 PERCENT CONFIDENCE THAT
10:49AM 19 THEY'RE GOING TO GET THE VENOUS DRAW NUMBERS DOWN TO SINGLE
10:49AM 20 DIGITS BY THE END OF THE YEAR.

10:49AM 21 THAT NEVER HAPPENED. BALWANI KNOWS IT'S NOT GOING TO
10:49AM 22 HAPPEN BECAUSE THEY DON'T HAVE THE TECHNOLOGY TO DO IT.

10:49AM 23 SO WHEN HE TELLS LISA PETERSON WE'RE GOING TO HAVE A
10:49AM 24 BILLION DOLLARS IN REVENUE BASED ON 900 WALGREENS STORES, HE'S
10:49AM 25 NOT BEING EXTRA TRANSPARENT. HE'S BEING PARTICULARLY

10:49AM 1 MISLEADING BECAUSE THAT SUGGESTS THAT 900 IS REASONABLE, THAT
10:49AM 2 IT'S POSSIBLE THAT THEY WOULD EVER GET THERE WHEN WALGREENS IS
10:49AM 3 DIRECTLY TELLING THEM WE ARE REDUCING THE NUMBER OF LOCATIONS
10:49AM 4 WE EXPECT TO ROLL OUT TO.

10:49AM 5 THE DEPARTMENT OF DEFENSE IS ANOTHER CATEGORY OF FALSE
10:49AM 6 STATEMENTS. LISA PETERSON TOLD YOU WHAT SHE HEARD, WHAT SHE
10:50AM 7 UNDERSTOOD THERANOS WAS DOING WITH THE DEPARTMENT OF DEFENSE,
10:50AM 8 THAT THE TECHNOLOGY WAS BEING USED ON MEDEVAC HELICOPTERS IN
10:50AM 9 THE TREATMENT OF SOLDIERS.

10:50AM 10 YOU KNOW FROM MR. EDLIN'S TESTIMONY THAT THAT'S NOT TRUE.
10:50AM 11 THAT NEVER HAPPENED.

10:50AM 12 BRIAN GROSSMAN ALSO TOLD YOU WHAT HE HEARD ABOUT THE USE
10:50AM 13 OF THE TECHNOLOGY IN THE BATTLEFIELD. SAME THING. HE
10:50AM 14 UNDERSTOOD THAT THE TECHNOLOGY WAS BEING USED IN THE
10:50AM 15 BATTLEFIELD TO HELP IDENTIFY VIRUSES OR BACTERIAS AHEAD OF TIME
10:50AM 16 TO SAVE LIVES.

10:50AM 17 AGAIN, EDLIN TOLD YOU WHO WORKED AT THERANOS ON DOD
10:50AM 18 PROJECTS, THAT THAT IS NOT WHAT THERANOS WAS DOING WITH THE
10:50AM 19 DEPARTMENT OF DEFENSE.

10:50AM 20 YOU ALSO HEARD ABOUT FALSE STATEMENTS CONCERNING THE USE
10:50AM 21 OF THIRD PARTY DEVICES. REMEMBER, I TOLD YOU THAT
10:50AM 22 BRIAN GROSSMAN WAS PARTICULARLY INTERESTED IN THE AMOUNT OF
10:50AM 23 SQUARE FOOTAGE THAT THE THERANOS LAB WOULD REQUIRE IN ORDER FOR
10:50AM 24 FUTURE LEASE OR REAL ESTATE EXPENSES AND WHAT THAT SORT OF WAS
10:51AM 25 LINKED TO WAS WHETHER TO USE THIRD PARTY DEVICES, THE VERY

10:51AM 1 LARGE BLOOD TESTING MACHINES MADE BY SIEMENS OR THE MUCH
10:51AM 2 SMALLER MACHINES USED BY THERANOS.

10:51AM 3 AND GROSSMAN TOLD YOU THAT HIS UNDERSTANDING WAS THAT
10:51AM 4 THERANOS DID NOT USE THESE THIRD PARTY MACHINES, AND IF HE HAD
10:51AM 5 KNOWN THAT, HE WOULD HAVE BEEN INVESTING IN A VERY DIFFERENT
10:51AM 6 COMPANY THAN HE THOUGHT HE DID.

10:51AM 7 THERE WERE FALSE STATEMENTS MADE ABOUT VALIDATION WORK
10:51AM 8 THAT THERANOS DID WITH PHARMACEUTICAL COMPANIES. I'M SHOWING
10:51AM 9 YOU HERE EXHIBIT 291. I WANT TO MENTION SOMETHING ABOUT THIS
10:51AM 10 EXHIBIT.

10:51AM 11 YOU RECALL ON OCCASION AN EXHIBIT WOULD BE ADMITTED AND
10:51AM 12 THE JUDGE WOULD TURN TO YOU AND SAY, "THIS EXHIBIT IS ADMITTED
10:51AM 13 FOR A LIMITED PURPOSE. IT'S NOT FOR THE TRUTH OF THE MATTER,
10:51AM 14 BUT IT'S ADMITTED FOR FALSITY OR KNOWLEDGE OF THE DEFENDANT,"
10:51AM 15 OR FILL IN THE BLANK FOR VARIOUS REASONS. THIS IS ONE OF THOSE
10:51AM 16 EXHIBITS. THIS EXHIBIT WAS ADMITTED FOR A LIMITED PURPOSE, AND
10:52AM 17 I WANT TO TALK TO YOU ABOUT THAT.

10:52AM 18 THIS EXHIBIT IS NOT COMING IN FOR THE TRUTH.

10:52AM 19 IN FACT, YOU'LL SEE WHEN WE LOOK AT THE EMAIL TOGETHER,
10:52AM 20 IT'S FALSE. IT'S NOT TRUTH. THE PURPOSE OF THE EMAIL, THOUGH,
10:52AM 21 IS THAT MR. BALWANI IS ON IT, MR. BALWANI RECEIVES THE
10:52AM 22 ATTACHMENTS, AND MR. BALWANI NOW BACK IN 2010 KNOWS ABOUT THE
10:52AM 23 COMMUNICATION OF THE FALSE STATEMENTS THAT ARE CONTAINED IN THE
10:52AM 24 EMAIL.

10:52AM 25 SO LET'S LOOK AT THE EMAIL.

10:52AM 1 ELIZABETH HOLMES IS WRITING TO FOLKS AT WALGREENS AND
10:52AM 2 SHE'S ATTACHING SOME DOCUMENTS. AND IN THE BACKGROUND YOU CAN
10:52AM 3 SEE TWO DOCUMENTS THAT ARE ATTACHED.

10:52AM 4 AND MS. HOLMES WRITES, "DR. JAY, ALEX,
10:52AM 5 "AS PER OUR DISCUSSION, PLEASE FIND THREE INDEPENDENT DUE
10:52AM 6 DILIGENCE REPORTS ON THERANOS SYSTEMS ATTACHED TO THIS EMAIL.
10:52AM 7 THESE REPORTS ARE FROM GLAXOSMITHKLINE, PFIZER, AND
10:53AM 8 SCHERING-PLOUGH AFTER THEIR OWN TECHNICAL VALIDATION AND
10:53AM 9 EXPERIENCE WITH THERANOS SYSTEMS IN THE FIELD."

10:53AM 10 SO PHARMA VALIDATION REPORTS ATTACHED TO AN EMAIL SENT TO
10:53AM 11 WALGREENS AND WALGREENS ARE BEING TOLD FIRST THEY'RE FROM,
10:53AM 12 NOTICE THAT WORD "FROM," GLAXOSMITHKLINE, PFIZER, AND
10:53AM 13 SCHERING-PLOUGH; AND, SECOND, AFTER THEIR OWN TECHNICAL
10:53AM 14 VALIDATION AND EXPERIENCE WITH THERANOS. YOU KNOW BOTH OF
10:53AM 15 THOSE ARE FALSE. YOU KNOW THEY'RE NOT FROM THE PHARMA
10:53AM 16 COMPANIES. YOU KNOW BECAUSE SCHERING-PLOUGH AND PFIZER CAME
10:53AM 17 AND TOLD YOU THEY WERE NOT CREATED BY SCHERING-PLOUGH AND
10:53AM 18 PFIZER, SO YOU KNOW THEY'RE NOT FROM, AND YOU KNOW THEY'RE NOT
10:53AM 19 AFTER THE PHARMA COMPANY'S OWN TECHNICAL VALIDATION OF THE
10:53AM 20 THERANOS TECHNOLOGY.

10:53AM 21 AGAIN, WEBER AND CULLEN CAME AND TOLD YOU THAT THEY DID
10:53AM 22 NOT VALIDATE THE THERANOS TECHNOLOGY. SO BACK IN APRIL OF
10:53AM 23 2010, BALWANI SEES THIS EMAIL WHERE HE SEES THESE FALSE
10:53AM 24 STATEMENTS BEING COMMUNICATED TO WALGREENS. THIS IS ALSO PART
10:54AM 25 OF THE DECEPTION THAT HAPPENS TO WALGREENS. WALGREENS SIGNS UP

10:54AM 1 FOR THIS RELATIONSHIP WITH THERANOS BECAUSE THEY'RE HEARING THE
10:54AM 2 SAME KINDS OF FALSE STATEMENTS THAT INVESTORS ARE HEARING.
10:54AM 3 THEY CAN DO THE FULL RANGE OF TESTS. THEY'VE BEEN VALIDATED BY
10:54AM 4 PHARMA WORK.

10:54AM 5 SO WHEN MR. BALWANI TELLS AN INVESTOR THAT THERANOS IS
10:54AM 6 GOING TO BE IN 900 STORES NEXT YEAR, HE KNOWS THAT'S NOT TRUE,
10:54AM 7 BECAUSE HE KNOWS THE RELATIONSHIP WITH WALGREENS WAS BUILT ON
10:54AM 8 FRAUD, AND IT'S ONLY A MATTER OF TIME BEFORE THAT RELATIONSHIP
10:54AM 9 ALSO COLLAPSES.

10:54AM 10 THERE ARE CLAIMS REGARDING VALIDATION BY PHARMA COMPANIES
10:54AM 11 IN INVESTOR BINDERS. THE EMAIL THAT I JUST SHOWED YOU WENT TO
10:54AM 12 WALGREENS, BUT THOSE SAME CLAIMS APPEAR IN THE INVESTOR
10:54AM 13 BINDERS. THE INVESTORS ARE TOLD THAT "THERANOS HAS BEEN
10:54AM 14 COMPREHENSIVELY VALIDATED OVER THE COURSE OF THE LAST 7 YEARS
10:54AM 15 BY 10 OF THE 15 LARGEST PHARMACEUTICAL COMPANIES WITH HUNDREDS
10:55AM 16 OF THOUSANDS OF ASSAYS PROCESSED."

10:55AM 17 SO THE SAME FALSE STATEMENT THAT WALGREENS HEARS,
10:55AM 18 INVESTORS HEAR.

10:55AM 19 ARTICLES IN THE MEDIA. I'M SHOWING YOU THREE OF THEM.
10:55AM 20 THE ONE ON THE LEFT IS "WIRED," THE ONE IN THE MIDDLE TOWARDS
10:55AM 21 THE BOTTOM IS "THE WALL STREET JOURNAL," AND THE ONE ON THE
10:55AM 22 RIGHT IS "FORTUNE." THEY ALL CONTAIN FALSE STATEMENTS ABOUT
10:55AM 23 THERANOS TECHNOLOGY. NOTICE THE "WIRED" ONE, THE ONE ON THE
10:55AM 24 LEFT SAYS, "WE'RE ABLE TO DO THE TESTING USING JUST A SINGLE
10:55AM 25 MICRO-SAMPLE RATHER THAN HAVING TO DRAW A DEDICATED TUBE FREE

10:55AM 1 TYPE OF TESTS."

10:55AM 2 YOU KNOW THAT'S FALSE. LOOK AT THE BOTTOM, THE ONE FROM
10:55AM 3 "THE WALL STREET JOURNAL." LET ME NOTE, THIS IS THE 2013
10:55AM 4 "WALL STREET JOURNAL" ARTICLE.

10:55AM 5 REMEMBER, I MENTIONED THERE'S TWO. 2013 IS THE POSITIVE
10:55AM 6 ONE AT THE WALGREENS LAUNCH. 2015 IS THE NEGATIVE ONE. THIS
10:55AM 7 IS THE 2013 ONE WHERE IT SAYS, "THERANOS'S PROCESSES ARE
10:56AM 8 FASTER, CHEAPER, AND MORE ACCURATE THAN CONVENTIONAL METHODS
10:56AM 9 AND REQUIRE ONLY MICROSCOPIC BLOOD VOLUMES, NOT VIAL AFTER VIAL
10:56AM 10 OF THE STUFF." AGAIN, A FALSE STATEMENT.

10:56AM 11 AND THEN LOOK TO THE RIGHT, THE "FORTUNE" ARTICLE WHERE
10:56AM 12 THE READER, THE INVESTORS IN THIS INSTANCE ARE TOLD, "THERANOS,
10:56AM 13 WHICH DOES NOT BUY ANY ANALYZERS FROM THIRD PARTIES." AGAIN,
10:56AM 14 CONSISTENT WITH WHAT INVESTORS WERE TOLD.

10:56AM 15 IT ALSO APPEARS IN MEDIA ARTICLES, BUT HERE YOU CAN SEE
10:56AM 16 THE POINT I MADE EARLIER, THIS IS NOT AN INSTANCE OF AN ARTICLE
10:56AM 17 BEING WRITTEN AND AN INVESTOR STUMBLING UPON IT AND THERANOS
10:56AM 18 NOT HAVING ANY ROLE IN IT.

10:56AM 19 THERANOS TAKES THESE ARTICLES AND SHARES THEM WITH AN
10:56AM 20 INVESTOR. THE ONE ON THE RIGHT IS AN EMAIL WHERE IT'S SENT TO
10:56AM 21 SHAREHOLDERS; THE ONE IN THE MIDDLE IS ON THE THERANOS WEBSITE
10:56AM 22 WHERE THEY LINK TO THE ARTICLES; AND THE ONE ON THE RIGHT IS
10:57AM 23 WITHIN AN INVESTOR BINDER. THEY HAVE A SECTION CALLED "RECENT
10:57AM 24 PRESS," AND THEY INCLUDE THE NAMES OF THE ARTICLES AND EVEN
10:57AM 25 IMAGES FROM EITHER THE PERIODICAL OR THE COVER OF THE MAGAZINE.

1 SO THERANOS IS ENDORSING THE CONTENT OF THESE ARTICLES.

2 I TOLD YOU THAT THE FIRST ELEMENT WAS KNOWLEDGE. AND WE
3 BROKE UP THE EXISTENCE OF A SCHEME TO DEFRAUD BASED ON FALSE
4 STATEMENTS FROM MR. BALWANI'S KNOWLEDGE OF THAT SCHEME TO
5 DEFRAUD. IT'S ALL ONE ELEMENT IN THE INSTRUCTIONS, BUT I WANT
6 TO MAKE SURE THAT YOU SEE THE GOVERNMENT IS REQUIRED TO PROVE
7 MORE THAN ONE THING IN THAT ELEMENT, BOTH THE EXISTENCE OF A
8 SCHEME AND NOW MR. BALWANI'S KNOWLEDGE OF THAT SCHEME, THE SAME
9 CATEGORIES OF FALSE STATEMENTS.

10 SO I'M JUST SHOWING YOU AGAIN, THESE ARE THE SAME
11 CATEGORIES THAT WE TALKED ABOUT.

12 LET'S SHOW MR. BALWANI'S KNOWLEDGE OF THE SCHEME.

13 WELL, MR. BALWANI IS ON THIS EMAIL WHERE HE AND MS. HOLMES
14 ARE BEING TOLD THAT CERTAIN STATEMENTS ARE NOT TRUE, THEY'RE
15 MISLEADING, AND THEY SHOULD BE CHANGED. STATEMENTS LIKE "ALL
16 TESTS" OR "FULL RANGE OF TESTS, HIGHEST QUALITY."

17 SO WHEN YOU SEE THOSE APPEARING IN A SCHEME, THAT'S THE
18 EXISTENCE OF A SCHEME, BUT EMAILS LIKE THIS PROVE KNOWLEDGE,
19 PROVE MR. BALWANI KNOWS OF THAT.

20 THEY ALSO PROVE INTENT BECAUSE IF THE DOCUMENTS CONTINUE
21 TO CONTAIN THESE FALSE STATEMENTS, THAT'S KNOWLEDGE OF THE
22 FALSITY OF THE STATEMENTS AND ALSO AN INTENT TO DEFRAUD BECAUSE
23 OF THE PURPOSE OF THESE FALSE STATEMENTS.

24 SO EMAILS LIKE THIS SERVE MULTIPLE PURPOSES.

25 AND THAT'S NOT THE ONLY ONE. THERE ARE OTHER EMAILS WHERE

10:58AM 1 THEY'RE BEING WARNED THAT THEIR WEBSITE CONTAINS FALSE
10:58AM 2 STATEMENTS.

10:58AM 3 "A TINY DROP IS ALL IT TAKES" IS NOT ACCURATE BECAUSE
10:58AM 4 MR. BALWANI IS BEING TOLD THEY HAVE TO USE MORE THAN A TINY
10:58AM 5 DROP. "A FEW DROPS," "AS LITTLE AS ONE DROP," OTHER PHRASES
10:59AM 6 ARE WHAT THEY WERE ENCOURAGED TO USE, BUT YOU'VE SEEN THEY
10:59AM 7 CONTINUE TO SAY "A TINY DROP."

10:59AM 8 THERE IS ALSO KNOWLEDGE EVIDENCE IN THE TEXT MESSAGES.
10:59AM 9 HERE'S THE TEXT THAT I MENTIONED TO YOU ABOUT THE MURDOCH
10:59AM 10 BINDERS WHERE ELIZABETH HOLMES IS WRITING TO MR. BALWANI, "ARE
10:59AM 11 THERE ANY MATERIALS IN THE BINDERS YOU THINK SHOULD BE REMOVED
10:59AM 12 FOR MURDOCH/NEWS CORP."

10:59AM 13 SO MR. BALWANI IS NOT ONLY SENDING THESE BINDERS TO
10:59AM 14 INVESTORS, HE'S NOT ONLY DISCUSSING THE CONTENT OF THE INVESTOR
10:59AM 15 BINDERS WITH INVESTORS, BUT HE'S ALSO COMMUNICATING WITH
10:59AM 16 ELIZABETH HOLMES BEFORE THE BINDERS EVEN GET SENT OUT ABOUT
10:59AM 17 WHAT SHOULD BE IN THE BINDER, WHAT THEY SHOULD CONTAIN.

10:59AM 18 THERE ARE ALSO FALSE STATEMENTS THAT INVESTORS HEARD ABOUT
10:59AM 19 THE CAPABILITIES OF THERANOS'S TECHNOLOGY RELATED TO
10:59AM 20 FINGERSTICK. HOW MANY TESTS WERE DONE BY FINGERSTICK?

10:59AM 21 AND RECALL WHEN MS. BENNETT TESTIFIED, SHE WAS DESCRIBING
10:59AM 22 TO YOU THE CMS INSPECTION AND THE INFORMATION THAT SHE WAS
11:00AM 23 RECEIVING FROM MR. BALWANI DURING THAT CMS INSPECTION.

11:00AM 24 AND ONE OF THE THINGS THAT SHE RECEIVED IS THIS DOCUMENT
11:00AM 25 THAT DESCRIBED WHICH TESTS THERANOS WAS DOING ON FDA CLEARED

11:00AM 1 DEVICES AND WHICH IT WAS DOING VIA A PROCESS CALLED LDT'S, OR
11:00AM 2 LAB DEVELOPED TESTS.

11:00AM 3 AND YOU HEARD -- REMEMBER WE TALKED A MOMENT AGO ABOUT
11:00AM 4 THE THREE DIFFERENT WAYS THAT BLOOD GOT TESTED AT THERANOS.
11:00AM 5 ONE WAS ON A THERANOS DEVICE, AND THE SECOND WAS ON A MODIFIED
11:00AM 6 THIRD PARTY DEVICE. THOSE TWO ARE LAB DEVELOPED TESTS.

11:00AM 7 THE THIRD WAY, ON A COMMERCIALLY AVAILABLE DEVICE WITH NO
11:00AM 8 CHANGES IS JUST THAT, IT'S AN FDA CLEARED OR OTHERWISE APPROVED
11:00AM 9 DEVICE. AND THE VAST MAJORITY OF BLOOD TESTS THAT WERE OFFERED
11:00AM 10 AT THERANOS, ACCORDING TO THIS DOCUMENT THAT BALWANI PROVIDED
11:00AM 11 TO BENNETT, 256 OF THE 295 TESTS AT THERANOS WERE ON THE
11:00AM 12 COMMERCIALLY AVAILABLE DEVICES.

11:00AM 13 SO WHEN BALWANI IS COMMUNICATING TO INVESTORS THAT
11:01AM 14 THERANOS'S TECHNOLOGY OFFERS THE FULL RANGE OF TESTS. THAT
11:01AM 15 ISN'T TRUE. THIS MUCH SMALLER NUMBER, 39, INCLUDED EITHER THE
11:01AM 16 EDISON DEVICE OR A MODIFIED THIRD PARTY DEVICE.

11:01AM 17 WE CAN BREAK THAT NUMBER OUT EVEN FURTHER. IF NOW WE'RE
11:01AM 18 JUST TALKING ABOUT THE LAB DEVELOPED TESTS AND YOU WANT TO
11:01AM 19 SEPARATE OUT ONLY THE EDISON TESTS, THAT WHICH THE INVESTORS
11:01AM 20 ACTUALLY THOUGHT THEY WERE INVESTING IN, THE THERANOS BOX
11:01AM 21 RUNNING THERANOS BLOOD TESTS, IT WAS 12. AND THEY'VE PROVIDED
11:01AM 22 A DOCUMENT, MR. BALWANI TO MS. BENNETT, THAT LISTS THE START
11:01AM 23 DATE AND THE END DATE FOR THOSE 12 TESTS, THE 12 ASSAYS THAT
11:01AM 24 WERE ACTUALLY RUN ON THE THERANOS DEVICE DURING THESE DATES.

11:01AM 25 SO ALL OF THE INVESTORS THAT YOU HEARD FROM THOUGHT THEY

11:01AM 1 WERE INVESTING IN A COMPANY THAT CREATED A NEW BLOOD TESTING
11:01AM 2 TECHNOLOGY THAT WAS MORE ACCURATE, THAT WAS FAR SUPERIOR THAN
11:02AM 3 WHAT WAS CONVENTIONALLY AVAILABLE, AND IT COULD DO THESE 12
11:02AM 4 TESTS. AND YOU HEARD WITNESS AFTER WITNESS TELL YOU IT
11:02AM 5 COULDN'T DO THESE 12 TESTS ACCURATELY.

11:02AM 6 YOU HEARD ABOUT ACCURACY PROBLEMS FROM WITNESSES. AND TO
11:02AM 7 PROVE MR. BALWANI'S KNOWLEDGE OF THESE ACCURACY PROBLEMS, YOU
11:02AM 8 ONLY HAVE TO LOOK AT THE WITNESSES WHO TESTIFIED, BECAUSE THEY
11:02AM 9 TOLD YOU THEY COMMUNICATED THOSE PROBLEMS DIRECTLY TO
11:02AM 10 MR. BALWANI.

11:02AM 11 ERIKA CHEUNG TOLD YOU THAT SHE WAS CONCERNED ABOUT
11:02AM 12 ACCURACY PROBLEMS AT THERANOS, AND THAT SHE TALKED TO
11:02AM 13 MR. BALWANI DIRECTLY ABOUT THOSE PROBLEMS, THINGS LIKE FAILING
11:02AM 14 QUALITY CONTROL.

11:02AM 15 AND YOU SEE ON THE LEFT PART OF THIS SCREEN, EMAILS GOING
11:02AM 16 TO MR. BALWANI THAT ARE POINTING OUT QUALITY CONTROL FAILURES.

11:02AM 17 LET'S TALK ABOUT QUALITY CONTROL JUST FOR A MOMENT. WHEN
11:03AM 18 MS. SAWYER, ONE OF THE CO-LAB DIRECTORS, WAS ON THE STAND SHE
11:03AM 19 TALKED TO YOU ABOUT THE IMPORTANCE OF QUALITY CONTROL. SO ONCE
11:03AM 20 A LAB TEST MOVES FROM R&D, RESEARCH AND DEVELOPMENT, AND THEN
11:03AM 21 TO THE CLIA LAB, AND IT WAS BEING TESTED ACTUALLY ON PATIENTS,
11:03AM 22 THE LAB WAS REQUIRED TO DO PERIODIC, OFTEN EVERY DAY, QUALITY
11:03AM 23 CONTROL TO MAKE SURE THAT THE DEVICE WAS TESTING ACCURATELY.

11:03AM 24 AND SAWYER TOLD YOU, AND OTHER WITNESSES AS WELL, THAT
11:03AM 25 QUALITY CONTROL IS IMPORTANT FOR A LOT OF REASONS, AND ONE OF

1 THE REASONS IS IT CAN KIND OF BE A CANARY IN THE COAL MINE FOR
2 ACCURACY PROBLEM. IF YOU'RE CONSTANTLY FAILING QUALITY
3 CONTROL, THAT SHOULD TELL YOU SOMETHING ABOUT WHETHER YOUR
4 TESTING IS ACCURATE, AND MR. BALWANI IS RECEIVING NOTICE
5 CONSTANTLY.

6 WE'LL LOOK AT MORE EXAMPLES WHERE THERANOS'S TESTS ARE
7 FAILING QUALITY CONTROL. BUT THAT ISN'T THE ONLY WAY. PEOPLE
8 ARE GOING TO HIM DIRECTLY, LIKE ERIKA CHEUNG, AND RAISING THOSE
9 CONCERNS.

10 MR. BALWANI ALSO KNOWS ABOUT THE FINANCIAL STABILITY
11 CHALLENGES. MS. SPIVEY TOLD YOU THAT HER INTERACTIONS WITH
12 MR. BALWANI INCREASED OVER TIME AS SHE WAS THERE LONGER AND HE
13 WAS THERE LONGER THEY BEGAN TO COMMUNICATE MORE AND MORE OFTEN,
14 IN PARTICULAR IN THE 2013, 2014, AND 2015 TIMEFRAME.

15 AND THEN ON A WEEKLY BASIS SHE WOULD SEND HIM DOCUMENTS,
16 LIKE THE DOCUMENTS ON THE RIGHT. AND THE FIRST ONE SHOWS YOU
17 THE AMOUNT OF REVENUE THAT THERANOS HAS, THE ACTUAL NUMBERS FOR
18 REVENUE. SO NOTHING IN '13 OR '12, AND ACTUALLY IN DECREASING
19 AMOUNT OF REVENUE FROM 9 -- 2009 THROUGH 2010 THROUGH 2011.

20 AND ON THE SAME DOCUMENT YOU SEE THE LOSS, THE AMOUNT OF
21 MONEY THAT THERANOS IS ACTUALLY LOSING IN THOSE YEARS. BUT
22 ALSO REMEMBER THIS CASH BALANCE SPREADSHEET, THE ONE ON THE
23 BOTTOM, THAT SHOWS YOU WEEK TO WEEK HOW MUCH CASH THERANOS HAS
24 ON HAND.

25 AND YOU MAY REMEMBER SOME TESTIMONY ABOUT THIS PARTICULAR

11:05AM 1 WEEK IN LATE SEPTEMBER OF 2013 WHEN THERANOS WAS DOWN TO
11:05AM 2 \$14 MILLION. YOU HEARD THAT, IN FACT, THAT ABOUT 7 MILLION OF
11:05AM 3 THAT WAS A LINE OF CREDIT. SO IF YOU DON'T INCLUDE THAT,
11:05AM 4 THERANOS WAS DOWN TO \$7 MILLION.

11:05AM 5 IN SEPTEMBER OF 2013 IT WAS RUNNING ON FUMES AND NEEDED AN
11:05AM 6 INFUSION OF CASH TO SURVIVE.

11:05AM 7 AFTER THAT, DECEMBER OF 2013, THE INVESTORS, THE FIRST
11:05AM 8 INVESTORS THAT YOU HEARD FROM ARE INVESTING, THE CHARGED WIRES.
11:05AM 9 SO THEY GET THE BIG INFUSION OF CASH, THE MEETINGS ARE ALL
11:05AM 10 OCCURRING AT THE END OF 2013, AND THAT'S WHEN ALL OF THE MONEY
11:05AM 11 COMES IN.

11:05AM 12 YOU HEARD ABOUT MR. BALWANI'S ROLE RUNNING SOFTWARE AND
11:05AM 13 THE ROLE THAT SOFTWARE PLAYED IN MISLEADING DEMOS AND SOMETHING
11:06AM 14 CALLED THE NULL PROTOCOL. YOU HEARD THAT THE NULL PROTOCOL WAS
11:06AM 15 USED TO SHIELD ERRORS FROM PEOPLE WHO WERE IN THE ROOM
11:06AM 16 RECEIVING THE DEMO.

11:06AM 17 AND EDLIN EXPLAINED TO YOU THAT THE NULL PROTOCOL WAS
11:06AM 18 DEVELOPED BY THE SOFTWARE FOLKS AT THERANOS. MR. BALWANI WAS
11:06AM 19 IN CHARGE OF THE SOFTWARE FOLKS.

11:06AM 20 YOU HEARD THAT IN ADDITION TO MISLEADING DEMOS LIKE WHAT
11:06AM 21 HAPPENED TO WALGREENS WHEN MR. JHAVERI THOUGHT HIS BLOOD WAS
11:06AM 22 BEING TESTED ON THE EDISON BUT THEN SAW THE INTERNAL EMAILS
11:06AM 23 SAYING THAT IT WAS TESTED ON THE ADVIA. IT WASN'T JUST A
11:06AM 24 DIFFERENT DEVICE, BUT INTERNAL EMAILS SHOW THAT THERANOS IS
11:06AM 25 CORRECTING, IN QUOTES, "RESULTS BEFORE THEY SEND THEM OUT."

11:06AM 1 SO THEY'RE DOING A DEMONSTRATION, THEY GET SOME RESULTS,
11:06AM 2 BUT THEY DON'T JUST THEN COMMUNICATE THOSE RESULTS TO THE DEMO
11:06AM 3 RECIPIENTS, THEY CORRECT THE RESULTS. THEY MAKE CHANGE TO THE
11:06AM 4 RESULTS BEFORE THEY SHARE THEM, FOR INSTANCE, IN THIS EMAIL "I
11:07AM 5 REMOVED THE THYROID RESULTS THAT I FELT WERE QUESTIONABLE."
11:07AM 6 THAT'S ALSO ON AN EMAIL TO MR. BALWANI. HE KNOWS THAT'S
11:07AM 7 HAPPENING ALSO.

11:07AM 8 YOU KNOW THAT IN ORDER FOR WALGREENS TO ROLL OUT FURTHER,
11:07AM 9 WALGREENS IS PAYING ATTENTION TO THE FINGERSTICK DRAW PER SE.
11:07AM 10 THAT WAS COMMUNICATED IN MEETINGS BETWEEN BOTH MR. JHAVERI AND
11:07AM 11 MR. BALWANI DIRECTLY. THEY WERE EACH OTHERS POINTS OF CONTACT.

11:07AM 12 ON THE RIGHT SIDE OF THIS SCREEN ON THE TOP, YOU SEE A
11:07AM 13 SLIDE THAT WAS PRESENTED DURING THESE PERIODIC MEETINGS WHERE
11:07AM 14 WALGREENS IS TRACKING AS A METRIC FOR HUGER EXPANSION THE
11:07AM 15 VENOUS DRAW PERCENT. YOU SEE THAT IN FEBRUARY OF 2014
11:07AM 16 VENOUS DRAWS ARE AT 43 PERCENT AND IN MAY THEY'RE AT
11:07AM 17 39 PERCENT. SO THEY'RE REMAINING AROUND 40 PERCENT.

11:07AM 18 AND REMEMBER, MR. JHAVERI TOLD YOU THAT HE COMMUNICATED
11:07AM 19 THOSE CONCERNS TO BALWANI AND BALWANI PRESENTED ON THIS TOPIC.
11:08AM 20 SUNNY BALWANI HIMSELF PRESENTED THIS SLIDE THAT YOU SEE BELOW
11:08AM 21 IT, THE ONE CALLED VENOUS DRAWS.

11:08AM 22 AND ON THIS SLIDE YOU SEE WHERE IT SAYS, "ORIGINALLY
11:08AM 23 ESTIMATED THAT BY THE END OF FEBRUARY 2014 WOULD BE BELOW
11:08AM 24 20 PERCENT OF TOTAL DRAWS AND BELOW 10 PERCENT BY END OF
11:08AM 25 AUGUST." THIS WHOLE SLIDE IS CALLED VENOUS DRAW.

11:08AM 1 SO BALWANI IS SAYING WE ORIGINALLY THOUGHT OUR
11:08AM 2 VENOUS DRAWS WERE GOING TO BE BELOW 20 PERCENT BY FEBRUARY OF
11:08AM 3 2014, AND YOU SAW FROM THAT SLIDE WE TALKED ABOUT A MOMENT AGO
11:08AM 4 IT WAS ACTUALLY 43 PERCENT.

11:08AM 5 THE SLIDE CONTINUES. HERE ARE THE CURRENT PROJECTIONS.
11:08AM 6 BELOW 20 PERCENT BY THE END OF AUGUST. HE EVEN GOES FURTHER TO
11:08AM 7 WRITE HIS CONFIDENCE LEVEL IN THAT ESTIMATE. 90 PERCENT
11:08AM 8 CONFIDENCE LEVEL;

11:08AM 9 BELOW 10 PERCENT BY THE END OF OCTOBER WITH A GREATER THAN
11:08AM 10 95 PERCENT CONFIDENCE LEVEL;

11:08AM 11 AND FINALLY, BELOW 5 PERCENT BY THE END OF THE YEAR, BY
11:09AM 12 THE END OF 2014, WITH A 90 PERCENT CONFIDENCE LEVEL.

11:09AM 13 BALWANI KNOWS THAT IN ORDER TO HAVE FURTHER EXPANSION WITH
11:09AM 14 WALGREENS, HE NEEDS TO GET THE VENOUS DRAW UNDER CONTROL, AND
11:09AM 15 SO HE'S TELLING THEM INCREDIBLY OPTIMISTIC PROJECTIONS ABOUT
11:09AM 16 THE LIKELIHOOD OF GETTING THOSE VENOUS DRAWS UNDER CONTROL.

11:09AM 17 HERE'S WHAT ACTUALLY HAPPENED. YOU SAW IN FEBRUARY OF
11:09AM 18 '14, VENOUS DRAWS ARE AT 43 PERCENT; IN MAY, 39 PERCENT; BY
11:09AM 19 NOVEMBER, 40 PERCENT, AND ALL THROUGH 2015, STILL 40 PERCENT.

11:09AM 20 JHAVERI TOLD YOU THERANOS NEVER ADDRESSED THE VENOUS DRAW
11:09AM 21 NUMBERS, AND THAT WASN'T SURPRISING TO BALWANI. HE KNEW THAT A
11:09AM 22 VERY SMALL PERCENTAGE OF THEIR TESTS WERE BEING DONE ON THE
11:09AM 23 EDISON DEVICE. THAT'S WHY HE REACTED SO NEGATIVELY ANY TIME
11:09AM 24 ONE OF HIS LAB DIRECTORS SUGGESTED THAT THEY STOP USING THE
11:09AM 25 EDISON DEVICE, MOVE TESTING OR STOP USING THE EDISON DEVICE

11:10AM 1 COMPLETELY BECAUSE THAT WOULD PREVENT FURTHER EXPANSION WITH
11:10AM 2 WALGREENS.

11:10AM 3 WHEN BALWANI WAS GIVEN THESE PROJECTIONS REGARDING THE
11:10AM 4 NUMBER OF STORES THAT THESE WOULD GO INTO IN WALGREENS, HE
11:10AM 5 WOULD GIVEN THOSE NUMBERS EVEN AFTER RECEIVING NEGATIVE
11:10AM 6 FEEDBACK DIRECTLY FROM WALGREENS.

11:10AM 7 SO IN THIS EMAIL YOU SAW WALGREENS TELLING BALWANI THAT
11:10AM 8 THEY'RE REDUCING THE NUMBER OF STORES THEY'RE PROJECTING FOR
11:10AM 9 THE NEXT FISCAL YEAR FROM 500 TO 200, AND THAT WALGREENS WAS
11:10AM 10 DOING THAT BECAUSE THE PILOT WASN'T A SUCCESS. THE PILOT
11:10AM 11 WASN'T SHOWING THE TECHNOLOGY WAS READY TO BE ROLLED OUT
11:10AM 12 FURTHER.

11:10AM 13 YOU HEARD SOME ARGUMENT ABOUT THIS 2,000 NUMBER IN THAT
11:10AM 14 CHART, AND THAT WAS ACTUALLY WHAT WALGREENS WAS PROJECTING,
11:10AM 15 THAT WALGREENS WAS SAYING IN THIS DOCUMENT THAT THEY WERE
11:10AM 16 ACTUALLY GOING TO GO TO 2,000 THERANOS LOCATIONS.

11:11AM 17 AND REMEMBER WHAT MR. JHAVERI TOLD YOU ABOUT THAT? HE
11:11AM 18 SAID, NO, WALGREENS HAD A SEPARATE PROJECT CALLED THE WELL
11:11AM 19 EXPERIENCE, AND THAT REQUIRED US TO TOUCH 2,000 STORES. AND WE
11:11AM 20 WANTED TO AT THE SAME TIME MAKE THOSE TOUCHES THERANOS STORES,
11:11AM 21 NOT 2,000 WELL EXPERIENCE STORES, AND THEN SEPARATELY 200
11:11AM 22 THERANOS STORES. IT'S DISRUPTIVE TO THE STORE. LET'S TOUCH
11:11AM 23 THEM ONCE. LET'S DO THE CONSTRUCTION ONE TIME.

11:11AM 24 SO THE THERANOS STORES WOULD BE WITHIN THIS GROUP OF WELL
11:11AM 25 EXPERIENCE STORES THAT WOULD NOT HOUSE THERANOS TECHNOLOGY.

1 BUT I'M GOING TO TAKE A STEP BACK FROM THIS, BECAUSE THIS
2 WHOLE ARGUMENT, WHAT WALGREENS THOUGHT, WHETHER INTERNALLY
3 WALGREENS THOUGHT LET'S SAY THEY WERE GOING TO GO TO 2,000, IF
4 THERE'S AN INTERNAL WALGREENS DOCUMENTS SAYING WE'RE GOING TO
5 GO TO 8,000 WALGREENS STORES, LET'S TALK FOR A MOMENT ABOUT THE
6 SIGNIFICANCE OF THAT.

7 WHAT COUNSEL WANTS YOU TO THINK IS IF INTERNALLY WALGREENS
8 THINKS THAT THEY'RE GOING TO GO TO 2,000 STORES, IF YOU DON'T
9 THINK JHAVERI WAS RIGHT, INTERNALLY THEY'RE GOING TO GO TO
10 2,000 STORES, THEN HOW COULD IT BE WRONG FOR MR. BALWANI TO
11 WRITE 900 AS AN ASSUMPTION FOR THE \$1 BILLION OF REVENUE?

12 IF INTERNALLY WALGREENS IS OPTIMISTIC ABOUT FUTURE
13 EXPANSION, THEN HOW COULD IT BE WRONG FOR MR. BALWANI TO BE
14 OPTIMISTIC ABOUT FUTURE WALGREENS EXPANSION? AND THAT'S
15 BECAUSE WALGREENS DOESN'T KNOW THEY'VE BEEN DECEIVED.
16 WALGREENS THINKS THAT THEY'VE PARTNERED WITH A COMPANY THAT CAN
17 TEST BLOOD ACCURATELY AND CAN DO IT BY FINGERSTICK.

18 SO MR. BALWANI DOESN'T NEED TO HEAR FROM WALGREENS THAT
19 THEY'VE CAUGHT ON TO IT, THAT THEY'VE NOW DISCOVERED THAT
20 THERANOS CAN'T TEST ACCURATELY, THERANOS CAN'T DO THIS BY
21 FINGERSTICK.

22 WHAT IS IN THESE DOCUMENTS ACTUALLY DOES REVEAL THAT
23 WALGREENS IS DISCOVERING THAT THERANOS ISN'T WHAT THEY SAID
24 THEY WERE; THAT THEIR VENOUS DRAW PERCENTS ARE AT 40 PERCENT
25 WHEN JHAVERI WENT A COUPLE OF DAYS EARLIER BEFORE THE LAUNCH,

11:13AM 1 HAD A FINGERSTICK AND THERE WAS AN EDISON IN THE ROOM, HE
11:13AM 2 DIDN'T KNOW THAT WAS TESTED BEHIND THE SCENES ON AN ADVIA
11:13AM 3 DEVICE.

11:13AM 4 IT DOESN'T REQUIRE INTERNAL WALGREENS DOCUMENTS TO SHOW A
11:13AM 5 STOP TO THE ROLLOUT TO PROVE BALWANI IS MAKING FALSE STATEMENTS
11:13AM 6 TO INVESTORS WHEN HE'S SAYING THAT WE'RE GOING TO BE IN 900
11:13AM 7 STORES NEXT YEAR AND HAVE A BILLION DOLLARS IN REVENUE. HE
11:13AM 8 KNOWS THAT BECAUSE HE KNOWS THAT WALGREENS WAS BROUGHT INTO THE
11:13AM 9 RELATIONSHIP WITH STATEMENTS LIKE WE'VE BEEN VALIDATED BY THESE
11:13AM 10 PHARMA COMPANIES AND THESE REPORTS AND WE CAN DO FINGERSTICK
11:13AM 11 TESTING.

11:13AM 12 BALWANI ALSO KNEW THAT FURTHER EXPANSION WITH WALGREENS
11:13AM 13 WASN'T GUARANTEED, THAT THE PILOT MATTERED, THAT THE SUCCESS OF
11:13AM 14 THE PILOT MATTERED BECAUSE IT WAS BOTH SOMETHING THAT WAS
11:13AM 15 DIRECTLY COMMUNICATED TO HIM BY JHAVERI BECAUSE IT WAS ALSO
11:14AM 16 SOMETHING ON THE RIGHT-HAND SIDE OF THE SCREEN YOU SEE THE
11:14AM 17 MASTER SERVICES AGREEMENT, THE AGREEMENT BETWEEN WALGREENS AND
11:14AM 18 THERANOS TO BEGIN TESTING HAS A SECTION ON CRITERIA FOR
11:14AM 19 NATIONAL ROLLOUT.

11:14AM 20 BUT IT ISN'T EVEN ONLY THOSE PLACES. IN THE TEXT
11:14AM 21 MESSAGES, BALWANI IS TELLING HOLMES, WE CAN'T SCALE WITH WAG.
11:14AM 22 THEY'RE TERRIBLE, AND WE NEED SAFEWAY AND CVS.

11:14AM 23 BALWANI DOESN'T NEED TO HEAR IT FROM WALGREENS THAT
11:14AM 24 THEY'RE NOT GOING TO GO NATIONAL. BALWANI KNOWS IT'S NOT
11:14AM 25 GUARANTEED. BALWANI KNOWS THAT WALGREENS CARES ABOUT

11:14AM 1 FINGERSTICK PERCENT, AND BALWANI KNOWS THAT WALGREENS DOESN'T
11:14AM 2 UNDERSTAND WHAT COMPANY THERANOS ACTUALLY IS, WHAT THEIR
11:14AM 3 TECHNOLOGY IS ACTUALLY CAPABLE OF.

11:14AM 4 THE USE OF THIRD PARTY DEVICES. I TOLD YOU THAT WAS A
11:14AM 5 CATEGORY OF FALSE STATEMENTS. IT WAS PART OF THE SCHEME.
11:14AM 6 HERE'S THE EVIDENCE THAT BALWANI KNEW THOSE STATEMENTS WERE
11:14AM 7 FALSE.

11:14AM 8 BALWANI PRESENTED DURING THE CMS INSPECTION, THE CMS
11:15AM 9 SURVEY, AND THE TYPES OF DEVICES THAT THERANOS USED WERE
11:15AM 10 INCLUDED IN THE SLIDES. IT WAS REVEALED THAT THERANOS USED
11:15AM 11 OTHER DEVICES WHEN THEY'RE COMMUNICATING WITH CMS, BUT THIS
11:15AM 12 ISN'T THE ONLY PLACE THAT YOU FIND THAT KNOWLEDGE FOR BALWANI.
11:15AM 13 IT'S ALL THROUGHOUT THE INTERNAL EMAILS, WHEN THEY'RE TALKING
11:15AM 14 ABOUT WHICH TEST IS BEING RUN ON WHICH DEVICE, THEY'RE SAYING
11:15AM 15 NAMES OF OTHER DEVICES LIKE IMMULITE OR ADVIA.

11:15AM 16 SO BALWANI KNOWS NOT JUST FALSE STATEMENTS ARE BEING MADE
11:15AM 17 TO INVESTORS, BUT ALSO ABOUT THIS SPECIFIC ISSUE, WHEN THEY'RE
11:15AM 18 USING THIRD PARTY DEVICES OR NOT.

11:15AM 19 BALWANI KNOWS THAT THE INVESTORS HAVE BEEN TOLD FALSE
11:15AM 20 INFORMATION REGARDING THERANOS'S VALIDATION BY PHARMACEUTICAL
11:15AM 21 COMPANIES. SO ON THE LEFT YOU SEE A DOCUMENT THAT WAS SENT
11:15AM 22 FROM MS. HOLMES TO WAL-MART. MR. BALWANI IS CC'D ON THIS ONE.
11:15AM 23 THIS IS SENT IN MARCH OF 2010, AND THIS DOCUMENT CONTAINS A
11:16AM 24 COPY OF THAT SCHERING-PLOUGH REPORT WITHOUT THE SCHERING-PLOUGH
11:16AM 25 LOGO.

11:16AM 1 A FEW WEEKS LATER IS EXHIBIT 291, THE ONE I SHOWED YOU A
11:16AM 2 FEW MOMENTS AGO. THIS ONE IS SENT TO WALGREENS NOW IN APRIL,
11:16AM 3 THE NEXT MONTH, WITH THE SCHERING-PLOUGH LOGO.

11:16AM 4 BALWANI RECEIVES BOTH OF THEM.

11:16AM 5 BALWANI KNOWS THAT THERANOS IS ADDING THE SCHERING-PLOUGH
11:16AM 6 LOGO TO DOCUMENTS.

11:16AM 7 BALWANI KNOWS THAT THERANOS IS CLAIMING THAT
11:16AM 8 SCHERING-PLOUGH VALIDATED ITS TECHNOLOGY.

11:16AM 9 BALWANI KNOWS THAT INVESTORS ARE BEING TOLD THAT 10 OF THE
11:16AM 10 15 LARGEST PHARMACEUTICAL COMPANIES HAD VALIDATED THERANOS'S
11:16AM 11 TECHNOLOGY.

11:16AM 12 BALWANI KNOWS THAT THERANOS IS EMAILING ARTICLES THAT
11:16AM 13 APPEAR IN THE MEDIA TO INVESTORS; THAT IT'S SHARING THIS
11:16AM 14 INFORMATION.

11:16AM 15 BUT AFTER HAVING RECEIVED ADVANCE NOTICE PREPUBLICATION
11:16AM 16 WITH BOTH THE "WIRED" ARTICLE AND THAT 2013
11:17AM 17 "WALL STREET JOURNAL" ARTICLE YOU SEE IN EMAILS WHERE BALWANI
11:17AM 18 IS BEING TOLD AHEAD OF TIME THE "WIRED" ARTICLE IS GOING TO
11:17AM 19 COME OUT. AND THEN AS TO THIS "WALL STREET JOURNAL" ARTICLE,
11:17AM 20 THE AUTHOR SENDS THE QUOTES AHEAD OF TIME. THE QUOTES GET SENT
11:17AM 21 AHEAD OF TIME TO HOLMES AND BALWANI BEFORE "THE
11:17AM 22 WALL STREET JOURNAL" IS PUBLISHED.

11:17AM 23 AND YOU AND I JUST LOOKED A MOMENT AGO AT THE FALSE
11:17AM 24 INFORMATION THAT WAS CONTAINED IN "THE WALL STREET JOURNAL" IN
11:17AM 25 2013 THAT THEY THEN SHARED DIRECTLY WITH INVESTORS.

1 THE SECOND ELEMENT FOR THE INVESTOR COUNTS IS THIS CONCEPT
2 OF MATERIALITY, THAT IS, INVESTORS HEARD THAT THEY RECEIVED
3 FALSE STATEMENTS FROM HOLMES AND BALWANI, AND THOSE FALSE
4 STATEMENTS NEED TO BE OF A CERTAIN TYPE. THE STATEMENTS NEED
5 TO BE MATERIAL, THAT IS, THEY HAVE TO HAVE THIS TENDENCY, THIS
6 NATURAL TENDENCY TO INFLUENCE OR BE CAPABLE OF INFLUENCING A
7 PERSON TO PART WITH MONEY.

8 AND THERE'S AN IMPORTANT DISTINCTION HERE BETWEEN ACTUAL
9 RELIANCE AND THE CAPABILITY OF INFLUENCING OR OBJECTIVE OR
10 SUBJECTIVE RELIANCE.

11 AND WHAT THAT MEANS IS THAT YOU DON'T HAVE TO TIE A
12 SPECIFIC FALSE STATEMENT MADE TO AN INVESTMENT TO BE THE
13 SPECIFIC FALSE STATEMENT THAT CAUSED THE INVESTOR TO INVEST.
14 THE KIND OF FALSE STATEMENTS NEED TO BE THE KIND OF FALSE
15 STATEMENTS THAT WOULD CAUSE AN INVESTOR TO INVEST, BUT YOU
16 DON'T NEED ACTUAL RELIANCE BY AN INVESTOR.

17 ONE REASON WHY THAT IS IMPORTANT IN THIS CASE IS BECAUSE
18 YOU HAVE HEARD ARGUMENTS THAT PEOPLE LIKE LISA PETERSON DID NOT
19 MAKE THE FINAL DECISION TO INVEST FOR RDV, OR BRYAN TOLBERT
20 WORKED AT HALL, BUT BRYAN TOLBERT DIDN'T MAKE THE DECISION TO
21 INVEST. IT WAS CRAIG HALL.

22 AND THE REASON THIS ACTUAL RELIANCE ISSUE IS IMPORTANT IS
23 BECAUSE WHAT PETERSON AND TOLBERT TOLD YOU WAS HERE'S THE
24 BASKET OF FALSE STATEMENTS THAT WE RECEIVED, THAT WE USED TO
25 MAKE OUR INVESTMENT DECISION, AND THAT IS SUFFICIENT. THESE

11:19AM 1 ARE THE KIND OF STATEMENTS THAT WOULD HAVE THE TENDENCY, WOULD
11:19AM 2 BE CAPABLE OF INFLUENCING A DECISION TO INVEST.

11:19AM 3 COMPARE THAT TO IF HOLMES WAS DESCRIBING THE WEATHER ON
11:19AM 4 THE DAY SHE CREATED THERANOS. IT MIGHT BE FALSE. MAYBE SHE
11:19AM 5 SAID IT WAS SUNNY AND IT WASN'T. BUT THAT IS NOT THE KIND OF
11:19AM 6 FALSE STATEMENT THAT WOULD CAUSE SOMEONE TO INVEST, AND THAT IS
11:19AM 7 WHAT THE LAW WANTS TO PREVENT IS THESE INSIGNIFICANT FALSE
11:19AM 8 STATEMENTS BEING COMMUNICATED AND THEN SERVING AS THE BASIS OF
11:19AM 9 FRAUD CONVICTIONS.

11:19AM 10 IN THIS INSTANCE, THE FALSE STATEMENTS ARE OF THOSE
11:19AM 11 CATEGORIES THAT WE TALKED ABOUT. THOSE ARE THE KINDS OF FALSE
11:19AM 12 STATEMENTS THAT WOULD CAUSE AN INVESTOR TO INVEST.

11:19AM 13 TIME FOR A BREAK?

11:19AM 14 THE COURT: YES. SHOULD WE TAKE A BREAK?

11:19AM 15 MR. SCHENK: YES.

11:19AM 16 THE COURT: MR. SCHENK, IS THIS A NATURAL BREAKING
11:20AM 17 POINT FOR YOU?

11:20AM 18 MR. SCHENK: YES, THAT WOULD BE FINE.

11:20AM 19 THE COURT: LET'S TAKE OUR LUNCH BREAK. LET'S TAKE
11:20AM 20 40 MINUTES, PLEASE, 40 MINUTES.

11:20AM 21 LADIES AND GENTLEMEN, LET ME JUST TELL YOU, YOU ARE NOT TO
11:20AM 22 BEGIN DELIBERATIONS NOW DURING THIS BREAK. YOU WILL NOT BEGIN
11:20AM 23 DELIBERATING THIS CASE IN ANY WAY UNTIL BOTH SIDES HAVE ARGUED
11:20AM 24 AND YOU RECEIVED THE FINAL INSTRUCTIONS FROM ME. SO PLEASE DO
11:20AM 25 NOT BEGIN DISCUSSING THE CASE IN ANY WAY DURING ANY OF OUR

11:20AM 1 BREAKS IN THIS PROCEEDING.

11:20AM 2 SO LET'S TAKE OUR BREAK NOW, AND WE'LL COME BACK IN ABOUT

11:20AM 3 40 MINUTES. THANK YOU.

11:20AM 4 (RECESS FROM 11:20 A.M. UNTIL 12:10 P.M.)

12:10PM 5 (JURY IN AT 12:10 P.M.)

12:10PM 6 THE COURT: ALL RIGHT. THANK YOU. WE'RE BACK ON

12:10PM 7 THE RECORD. ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

12:10PM 8 OUR JURY IS PRESENT. MR. BALWANI IS PRESENT.

12:11PM 9 MR. SCHENK, WOULD YOU LIKE TO CONTINUE WITH YOUR ARGUMENT?

12:11PM 10 MR. SCHENK: YES. THANK YOU, YOUR HONOR.

12:11PM 11 MAY I REMOVE MY MASK?

12:11PM 12 THE COURT: YES.

12:11PM 13 MR. SCHENK: GOOD AFTERNOON AGAIN. WE WERE TALKING

12:11PM 14 ABOUT THE ELEMENTS FOR THE CRIME OF WIRE FRAUD AS WIRE FRAUD

12:11PM 15 RELATES TO THE INVESTOR COUNTS.

12:11PM 16 WE WERE ON THE SECOND ELEMENT, THE ELEMENT OF MATERIALITY,

12:11PM 17 AND THAT WAS THE ELEMENT THAT REQUIRED THE GOVERNMENT TO PROVE

12:11PM 18 THAT THE FALSE STATEMENTS THAT WERE COMMUNICATED WERE THE KIND

12:11PM 19 THAT HAVE A TENDENCY OR WERE CAPABLE OF INFLUENCING AN INVESTOR

12:11PM 20 TO PART WITH MONEY.

12:11PM 21 AND WHAT WE'RE ABOUT TO LOOK AT IS ONE SLIDE LIKE THIS FOR

12:11PM 22 EACH INVESTOR.

12:11PM 23 SO YOU'LL SEE LISA PETERSON HEARD CERTAIN STATEMENTS, THE

12:12PM 24 SOURCE OF THOSE STATEMENTS, WHETHER THEY WERE ON A PARTICULAR

12:12PM 25 PHONE CALL OR IN THE INVESTOR BINDERS OR ANOTHER PLACE, AND

1 THEN, IN FACT, THE WITNESS SAYING THAT THE STATEMENT MATTERED.

2 RECALL, MATERIALITY DOES NOT REQUIRE THE GOVERNMENT TO
3 PROVE ACTUAL RELIANCE. IT'S ENOUGH TO LEAVE IT AS THE
4 STATEMENT BEING OF THE TYPE THAT IS CAPABLE OF INFLUENCING.

5 BUT YOU MAY REMEMBER IN THIS TRIAL, INSTANCES WHEN A
6 WITNESS, AN INVESTOR WAS ON THE STAND, AND THE GOVERNMENT WOULD
7 ASK DID MS. HOLMES OR MR. BALWANI TELL YOU ABOUT THE USE OF
8 THIRD PARTY DEVICES?

9 AND THE WITNESS WOULD SAY NO.

10 AND THEN THE GOVERNMENT WOULD FOLLOW UP WITH DID THAT
11 MATTER TO YOU? THIS IS WHY THERE WAS THAT CONSTANT REFRAMING
12 OF THE DID THAT MATTER QUESTION, BECAUSE, IN FACT, FOR THESE
13 STATEMENTS YOU HAVE ACTUAL RELIANCE.

14 FOR THESE STATEMENTS, THE WITNESSES TOLD YOU THAT THESE
15 PARTICULAR STATEMENTS DID MATTER IN THEIR INVESTMENT DECISIONS,
16 AND THE STATEMENTS THAT I'M REFERRING TO ALL TRACE BACK TO
17 THOSE CATEGORIES OF FALSE STATEMENTS.

18 SO THOSE CATEGORIES ARE BROAD AND THE SPECIFIC STATEMENTS
19 THAT THE INVESTORS HEARD ARE WELL WITHIN THOSE CATEGORIES OF
20 FALSE STATEMENTS.

21 AND YOU CAN SEE FOR LISA PETERSON, OF COURSE, THE 900
22 STORES AT WALGREENS MATTERED TO YOU BECAUSE THAT FED INTO THE
23 \$1 BILLION OF REVENUE PROJECTIONS THAT SHE HEARD, BUT IT WASN'T
24 LIMITED TO JUST THAT. SHE HEARD ABOUT THE TECHNOLOGY, THAT IT
25 WAS FASTER, CHEAPER, MORE ACCURATE.

12:13PM 1 BRYAN TOLBERT, ANOTHER COLLECTION OF FALSE STATEMENTS.

12:13PM 2 BRYAN TOLBERT HEARD ABOUT THE HIGHEST LEVELS OF ACCURACY, THE
12:13PM 3 ROLLOUT WITH WALGREENS, THE NUMBER OF TESTS, DOD WORK. AND,
12:13PM 4 AGAIN, YOU SEE WHERE IT CAME FROM AND THAT IT WAS MATERIAL TO
12:13PM 5 HIM.

12:13PM 6 DAN MOSLEY. I'LL REMIND YOU DAN MOSLEY WAS AN INVESTOR
12:14PM 7 WHO PAID PARTICULAR ATTENTION TO THE PFIZER PHARMA REPORT AND
12:14PM 8 WAS CUTTING AND PASTING QUOTES FROM THE PFIZER PHARMA REPORT
12:14PM 9 BECAUSE HE FOUND THAT TO BE THE MOST PERSUASIVE PIECE OF
12:14PM 10 EVIDENCE VALIDATING THE THERANOS TECHNOLOGY, BUT THAT WASN'T
12:14PM 11 THE ONLY FALSE STATEMENT THAT HE HEARD AND THAT HE RELIED UPON.
12:14PM 12 THERE WERE ADDITIONAL STATEMENTS THAT MR. MOSLEY HEARD.

12:14PM 13 ALAN EISENMAN HEARD OTHER STATEMENTS. HE HEARD ABOUT THE
12:14PM 14 THERANOS TECHNOLOGY, ABOUT ITS ACCURACY, WHERE ITS
12:14PM 15 MANUFACTURING WAS DONE, AND THAT'S IMPORTANT BECAUSE YOU KNOW
12:14PM 16 THAT OTHER MANUFACTURERS, THIRD PARTY MANUFACTURERS MAKE THEIR
12:14PM 17 DEVICES OUTSIDE OF THE U.S.

12:14PM 18 SO NOT ONLY IS IT SORT OF FROM A PATRIOT PERSPECTIVE MAYBE
12:14PM 19 IT MATTERS, BUT IT ALSO SAYS SOMETHING ABOUT THERANOS'S ABILITY
12:14PM 20 TO MANUFACTURE ITS OWN DEVICES WHEN IT SAYS THAT ITS
12:14PM 21 MANUFACTURING IS DONE HERE IN THE U.S.

12:14PM 22 CHRIS LUCAS ALSO HEARD A COLLECTION OF FALSE STATEMENTS,
12:15PM 23 THE TECHNOLOGY BEING USED IN THE MIDDLE EAST, THE NUMBER OF
12:15PM 24 TESTS AND THINGS LIKE THAT.

12:15PM 25 AND FINALLY, BRIAN GROSSMAN. HE ALSO HEARD A COLLECTION

12:15PM 1 OF FALSE STATEMENTS. AGAIN, ALL OF THEM TRACE BACK TO A
12:15PM 2 CATEGORY OF FALSE STATEMENTS THAT WE'VE BEEN TALKING ABOUT
12:15PM 3 EARLIER THIS MORNING.

12:15PM 4 THE THIRD ELEMENT IN WIRE FRAUD IS AN INTENT TO DEFRAUD,
12:15PM 5 AND THIS IS DEFINED AS AN INTENT TO DECEIVE OR CHEAT. THE
12:15PM 6 GOVERNMENT MUST PROVE THAT THE DEFENDANT ACTED WITH THE INTENT
12:15PM 7 TO DEFRAUD, IN OTHER WORDS, THIS THESE FALSE STATEMENTS WEREN'T
12:15PM 8 COMMUNICATED ACCIDENTALLY OR WITHOUT THE INTENT TO DEFRAUD BUT
12:15PM 9 WITH SOME OTHER INTENT.

12:15PM 10 SO THE INTENT EVIDENCE COMES FROM MUCH OF THE EVIDENCE
12:15PM 11 THAT WE'VE SPENT OUR TIME ALREADY REVIEWING TODAY.

12:15PM 12 THE INVESTOR BINDERS WERE REVIEWED AND APPROVED BY HOLMES
12:15PM 13 AND BALWANI. EDLIN TOLD YOU THAT HE HAS A SPECIFIC MEMORY OF
12:15PM 14 MR. BALWANI REVIEWING THE FINANCIALS, THAT PORTION IN THE
12:16PM 15 BINDERS THAT RELATES TO FINANCIAL RECORDS.

12:16PM 16 BUT EDLIN DIDN'T SEE THE TEXT MESSAGES, SO EDLIN DID NOT
12:16PM 17 KNOW ABOUT THE CONTENT, THE MESSAGES THAT TALK ABOUT RE-DOING
12:16PM 18 THE MURDOCH BINDER OR INSTANCES WHEN BALWANI SENT THE BINDERS
12:16PM 19 THEMSELVES LIKE TO GROSSMAN OR TO PETERSON.

12:16PM 20 SO EDLIN TOLD YOU HE KNOWS SPECIFICALLY BALWANI PLAYED A
12:16PM 21 ROLE IN THE FINANCIAL PORTION OF THE BINDERS, BUT YOU'VE
12:16PM 22 ACTUALLY SEEN EVIDENCE THAT IS MORE BROAD THAN THAT.

12:16PM 23 YOU'VE SEEN BALWANI EMAIL THE BINDERS. HERE'S AN EXAMPLE
12:16PM 24 OF HIM EMAILING THE BINDERS TO LISA PETERSON AT RDV, AND
12:16PM 25 LISA PETERSON CONFIRMING THAT WHAT SHE RECEIVED INCLUDED THE

12:16PM 1 INVESTMENT MATERIALS.

12:16PM 2 YOU HEARD MR. BALWANI MAKE DIRECT FALSE STATEMENTS TO
12:16PM 3 INVESTORS. WHEN WE BEGAN THIS MORNING, I SHOWED YOU THE
12:16PM 4 PORTION OF MR. MENDENHALL'S TESTIMONY WHERE HE CLARIFIED THAT
12:16PM 5 THESE SHORT, DIRECT SENTENCES ARE NOT MENDENHALL'S WRITING
12:17PM 6 STYLE BUT RATHER ARE BALWANI'S SPEAKING STYLE.

12:17PM 7 NOW LET'S SPEND A LITTLE BIT OF TIME ON WHAT BALWANI
12:17PM 8 ACTUALLY SAID. THIS IS BOTH KNOWLEDGE OF FALSE STATEMENTS,
12:17PM 9 MR. BALWANI COMMUNICATING FALSE STATEMENTS, BUT IT'S INTENT
12:17PM 10 EVIDENCE. MR. BALWANI IS DOING IT WITH A PURPOSE, A GOAL OF
12:17PM 11 DECEIVING OR CHEATING MENDENHALL. HELPFULLY, MR. MENDENHALL
12:17PM 12 REMEMBERS THESE FALSE STATEMENTS THAT HE RECEIVED.

12:17PM 13 NUMBERS 3, 4, AND 5 ARE "THE SCIENCE BEHIND THERANOS IS
12:17PM 14 COMPLETE; NO NEW SCIENCE NEEDED; NO NEW INVENTION NEEDED."

12:17PM 15 YOU AS THE JURY NOW HAVE SEEN THE EVIDENCE, AND YOU KNOW
12:17PM 16 ALL OF THAT IS FALSE.

12:17PM 17 6, 7, AND 8, "THEY ARE COMPLETELY VERTICALLY INTEGRATED
12:17PM 18 THEY OWN THE LAB AND THE MANUFACTURING; 100 PERCENT
12:17PM 19 MANUFACTURING IN U.S.A., NO SUBCONTRACTING; AND FULLY OWNED AND
12:17PM 20 PROTECTED MANUFACTURING ASSURES PRICING AND PROFIT STABILITY."

12:17PM 21 AGAIN, THIS ALL ASSUMES THAT THEY MANUFACTURED THE EDISON
12:18PM 22 DEVICE AND THEN USED THE EDISON DEVICE FOR THEIR BLOOD TESTING.
12:18PM 23 BUT YOU GUYS NOW KNOW THE TRUTH. THE TRUTH IS THAT COULDN'T
12:18PM 24 TEST ACCURATELY, AND THEY ONLY USED IT FOR A SMALL PERCENTAGE
12:18PM 25 OF THEIR TESTS.

12:18PM 1 NUMBER 12 IS "CURRENT CLINICAL TRIALS TAKE 6 VIALS AND CAN
12:18PM 2 RUN 10 TO 12 TESTS. THERANOS TAKES 3 DROPS AND CAN RUN 60 TO
12:18PM 3 70 TESTS."

12:18PM 4 YOU KNOW THIS IS A FALSE STATEMENT. YOU'VE SEEN THE
12:18PM 5 EVIDENCE.

12:18PM 6 NUMBER 17, "THE COMPETITION IS YEARS BEHIND ON TECHNOLOGY
12:18PM 7 (MAYBE LONGER) AND WITH BLOATED OVERHEADS AND BUREAUCRACY WOULD
12:18PM 8 HAVE TO CHARGE THE SAME RATES THEY CURRENTLY CHARGE OR HIGHER
12:18PM 9 THEREFORE MAKING THEIR ABILITY TO COMPETE, LET ALONE CATCH UP,
12:18PM 10 VERY DIFFICULT IF NOT IMPOSSIBLE."

12:18PM 11 YOU KNOW THIS IS FALSE BECAUSE THERANOS, JUST LIKE LABCORP
12:18PM 12 AND JUST LIKE QUEST, IS BUYING SIEMENS EQUIPMENT AND TESTING
12:18PM 13 BLOOD ON SIEMENS EQUIPMENT. SO THIS IDEA THAT THE COMPETITION
12:18PM 14 IS YEARS BEHIND WHEN FOR THE MAJORITY OF THERANOS'S TESTS
12:19PM 15 THEY'RE DOING IT THE SAME WAY THAT QUEST AND LABCORP, OTHER
12:19PM 16 LABS ARE DOING IT, AND YOU KNOW THAT IS A FALSE STATEMENT. AND
12:19PM 17 FOR THE REMAINDER, FOR THE THERANOS TESTS ON THERANOS DEVICES,
12:19PM 18 YOU KNOW THAT'S THE SOURCE OF THEIR ACCURACY AND RELIABILITY
12:19PM 19 PROBLEMS.

12:19PM 20 AND NOW FINANCIALS.

12:19PM 21 NUMBER 2 AND 3 IS A LITTLE FURTHER DOWN ON THE SAME LINE.

12:19PM 22 "2 - THEY CAN FUND GROWTH THRU CURRENT OPERATIONS -- NO
12:19PM 23 NEED FOR CAPITAL.

12:19PM 24 "3 - THEY ARE CURRENTLY RAISING MONEY ONLY TO RAPIDLY
12:19PM 25 ACCELERATE THE BUSINESS."

12:19PM 1 NOW, LET'S TALK ABOUT THE IMPORTANCE OF THIS FALSE
12:19PM 2 STATEMENT. SO PEOPLE LIKE MENDENHALL ARE INVESTING IN LATE
12:19PM 3 DECEMBER OF 2013.

12:19PM 4 REMEMBER, EARLIER WE LOOKED AT THE CASH BALANCE.
12:19PM 5 SEPTEMBER OF 2013 THERANOS IS DOWN TO \$7 MILLION. THEY NEED
12:19PM 6 MONEY. THEY CANNOT FUND THEIR CURRENT GROWTH THROUGH
12:19PM 7 OPERATIONS. THAT'S FALSE, WHAT MR. BALWANI IS COMMUNICATING,
12:19PM 8 BUT HE GOES FURTHER. MR. BALWANI EVEN GOES FURTHER AND SAYS
12:20PM 9 THAT THEY'RE RAISING MONEY TO RAPIDLY ACCELERATE.

12:20PM 10 NOW, THAT'S A FALSE STATEMENT THAT IS THE SAME KIND OF
12:20PM 11 FALSE STATEMENT THAT HOLMES TELLS TOLBERT IN THEIR PHONE CALL,
12:20PM 12 THE ONE THAT BALWANI IS NOT ON. SO FURTHER EVIDENCE THAT
12:20PM 13 THEY'RE CORROBORATING, THAT THEY KNOW WHAT EACH OTHER IS SAYING
12:20PM 14 BECAUSE BOTH ARE COMMUNICATING THIS PARTICULAR FALSE STATEMENT,
12:20PM 15 THAT THE REASON INVESTORS SHOULD INVEST IS NOT SO THERANOS CAN
12:20PM 16 TAKE THIS MONEY AND THEN GO OUT AND INVENT NOVEL BLOOD TESTING
12:20PM 17 TECHNOLOGY. THAT WOULD HAVE BEEN TRUE.

12:20PM 18 WHAT THEY TOLD INVESTORS, HOLMES WITH TOLBERT AND BALWANI
12:20PM 19 WITH MENDENHALL, IS WE'RE TAKING INVESTOR MONEY TO ACCELERATE
12:20PM 20 OUR GROWTH, SO WE CAN GROW MORE RAPIDLY WITH WALGREENS.

12:20PM 21 YOU KNOW THAT ISN'T WHAT THERANOS NEEDED THE MONEY FOR.

12:20PM 22 WHAT THERANOS NEEDED THE MONEY FOR WAS TO ACTUALLY NOW
12:20PM 23 INVEST, TO DEVELOP THE TECHNOLOGY, NOT TO MAKE EVOLUTIONS IN
12:20PM 24 THE TECHNOLOGY.

12:20PM 25 YOU KNOW, DURING THE TRIAL YOU HEARD IT COMPARED TO THE

12:21PM 1 APPLE IPHONE. WHEN THE 13 COMES OUT AND IT REPLACES THE 12,
12:21PM 2 THAT'S NOT A REVOLUTIONARY ADVANCEMENT, IT'S AN EVOLUTION IN
12:21PM 3 TECHNOLOGICAL INVESTMENT.

12:21PM 4 WHAT THERANOS NEEDED WAS A REVOLUTION. WHAT THERANOS
12:21PM 5 NEEDED WAS THE ACTUAL TECHNOLOGY TO ACCURATELY TEST PATIENT
12:21PM 6 BLOOD. AND WHEN THEY'RE TELLING PEOPLE WHAT THEY NEEDED WAS
12:21PM 7 JUST MONEY TO ACCELERATE GROWTH, THEY'RE PITCHING IT IN THIS
12:21PM 8 SORT OF EVOLUTIONARY PERSPECTIVE.

12:21PM 9 THERE'S ALSO INTENT EVIDENCE ON THE CONCEPT OF
12:21PM 10 TECHNOLOGICAL CAPABILITIES.

12:21PM 11 IN THE INVESTOR MATERIALS, THE INVESTORS ARE RECEIVING
12:21PM 12 STATEMENTS THAT TALK ABOUT THE BENEFITS OF THE THERANOS BLOOD
12:21PM 13 TESTING TECHNOLOGY THAT IS FASTER, THAT IT IS MORE ACCURATE,
12:21PM 14 AND EVEN ISSUES, CONCEPTS LIKE SPEED. YOU KNOW THAT WOULDN'T
12:21PM 15 BE TRUE BECAUSE THERANOS IS PERFORMING TESTING THE SAME WAY
12:21PM 16 OTHER LABS ARE THAT IS A CENTRAL LAB MODEL, SO THAT THE BLOOD
12:21PM 17 WOULD BE DRAWN AT A WALGREENS STORE BUT THEN SHIPPED BACK TO
12:22PM 18 PALO ALTO.

12:22PM 19 SO ALL OF THESE STATEMENTS ABOUT SPEED ASSUME THAT
12:22PM 20 THERANOS IS DOING SOMETHING THAT IT'S NOT DOING. FURTHER
12:22PM 21 INTENT EVIDENCE.

12:22PM 22 WE TALKED ABOUT THIS CONCEPT A LITTLE BIT EARLIER THIS
12:22PM 23 MORNING, THE IDEA THAT INVESTORS THOUGHT THAT THERANOS WAS MORE
12:22PM 24 AUTOMATED THAN WHAT WAS CURRENTLY AVAILABLE.

12:22PM 25 BUT DR. ROSENDORFF DESCRIBED TO YOU THE MANUAL PROCESS TO

12:22PM 1 REMOVE OUTLIERS. THAT IF THERANOS REALLY BELIEVED IN ITS
12:22PM 2 TECHNOLOGY, NO NEED FOR ONE EDISON TO RUN TWO TESTS TO TEST
12:22PM 3 CHOLESTEROL, FOR INSTANCE, TWICE. AND CERTAINLY NO NEED TO
12:22PM 4 THEN TAKE THREE EDISON MACHINES AND RUN THE CHOLESTEROL TESTS
12:22PM 5 SIX TIMES AND DROP TWO OUTLIERS. THAT'S THE MANUAL PROCESSING
12:22PM 6 THAT OCCURRED AT THERANOS BECAUSE EVEN AT THERANOS THEY DIDN'T
12:22PM 7 HAVE FAITH IN THEIR BLOOD TESTING TECHNOLOGY, AND THAT'S
12:22PM 8 COMPLETELY DIFFERENT THAN WHAT SOMEONE LIKED LISA PETERSON
12:22PM 9 UNDERSTOOD WHEN SHE RECEIVED THE INVESTOR SLIDE DECK THAT TALKS
12:23PM 10 ABOUT THE HIGHEST LEVELS OF STANDARDIZATION AND AUTOMATION TO
12:23PM 11 ELIMINATE ERRORS.

12:23PM 12 THE FINANCIAL STABILITY, ALSO FALSE STATEMENTS BUT SHARED
12:23PM 13 WITH THE INTENT TO DEFRAUD. BECAUSE COMPARE WHAT LISA PETERSON
12:23PM 14 HEARD, THIS DOCUMENT I'VE SHOWN YOU SEVERAL TIMES THAT INCLUDES
12:23PM 15 SIGNIFICANT REVENUE PROJECTIONS, VERSUS THE REALITY, THE
12:23PM 16 REALITY THAT BALWANI RECEIVED, THAT HE WAS AWARE OF.

12:23PM 17 THE DOCUMENT ON THE RIGHT CAME FROM SPIVEY, AND THAT'S
12:23PM 18 INTERNAL THERANOS SPREADSHEETS TRACKING REVENUE FROM
12:23PM 19 PHARMACEUTICAL COMPANIES. SO YOU SEE THE ONES THAT ARE
12:23PM 20 HIGHLIGHTED FROM ASTRAZENECA DOWN TO SCHERING-PLOUGH AND HOW
12:23PM 21 THERE'S ESSENTIALLY NO REVENUE AFTER 2011. THERE'S THAT ONE
12:23PM 22 INSTANCE OF REVENUE FROM AMERICAN BURN ASSOCIATION IN '14, BUT
12:23PM 23 OTHER THAN THAT \$38,000, THERE'S ESSENTIALLY NO REVENUE, AND
12:24PM 24 YET IN THE PROJECTIONS THAT ARE BEING SHARED WITH INVESTORS,
12:24PM 25 THEY'RE PROJECTING REVENUE FOR PHARMACEUTICAL SERVICES IN BOTH

12:24PM 1 2014 AND 2015, AND THEY'RE MAKING THIS PROJECTION IN OCTOBER OF
12:24PM 2 2014 WHEN THEY HAVEN'T HAD PHARMACEUTICAL REVENUE FOR YEARS.

12:24PM 3 THERE'S FURTHER FRAUD IN THOSE REVENUE NUMBERS. IF YOU
12:24PM 4 LOOK ABOVE AT THE PHARMACEUTICAL PROJECTIONS, THERE'S OTHER
12:24PM 5 SOURCES. LAB SERVICES REVENUE IN RETAIL AND PHYSICIANS
12:24PM 6 OFFICES, IN HOSPITALS.

12:24PM 7 AND WHEN MS. SPIVEY WAS ON THE STAND, SHE WENT THROUGH
12:24PM 8 EACH ONE OF THOSE AND TOLD YOU THERE WAS NO REVENUE FROM ANY OF
12:24PM 9 THOSE. SO THERANOS NOT ONLY IS PROJECTING REVENUE, BUT
12:24PM 10 REMEMBER WHEN WE TALKED ABOUT THIS MORNING WHEN LISA PETERSON
12:24PM 11 WAS GOING OVER THIS DOCUMENT WITH MR. BALWANI, HE WAS MAKING
12:24PM 12 ADJUSTMENTS TO THE DOLLAR AMOUNT. YOU KNOW, marginally
12:24PM 13 LOWERING SOME. ONE OF THOSE IS FROM \$161 MILLION TO \$160
12:25PM 14 MILLION.

12:25PM 15 SO IT'S NOT A DOCUMENT THAT IS BURIED WITHIN A BINDER OF
12:25PM 16 MATERIAL AND IGNORED. IT WAS ACTUALLY A DOCUMENT THAT HE
12:25PM 17 PULLED OUT AND REFINED SOME OF THOSE PROJECTIONS WHEN SPIVEY,
12:25PM 18 WHO WAS COMMUNICATING WITH BALWANI ABOUT FINANCES, TOLD YOU
12:25PM 19 THEY HAD NO REVENUE FROM THESE SOURCES.

12:25PM 20 THERE ARE OTHER INVESTORS, NOT JUST LISA PETERSON, WHO
12:25PM 21 RECEIVED THESE PROJECTIONS.

12:25PM 22 I'VE SHOWN YOU SEVERAL TIMES THE EXHIBIT THAT
12:25PM 23 LISA PETERSON RECEIVED, BUT MOSLEY RECEIVED THE SAME 2014 AND
12:25PM 24 2015 PROJECTIONS.

12:25PM 25 AND BRIAN GROSSMAN ALSO RECEIVED PROJECTIONS COVERING 2014

12:25PM 1 AND 2015, EXCEPT HIS NUMBERS WERE EVEN HIGHER. HIS NUMBERS HAD
12:25PM 2 A LARGER EXPECTED REVENUE FOR '14 AND EVEN A LARGER ONE FOR
12:25PM 3 2015.

12:25PM 4 SO THESE FALSE FINANCIAL STATEMENTS WERE NOT PROVIDED JUST
12:25PM 5 TO LISA PETERSON. THEY WERE GIVEN TO OTHER INVESTORS AS WELL.

12:26PM 6 THERE WAS ALSO MISLEADING DEMOS THAT WERE CONNECTED. WE
12:26PM 7 TALKED ABOUT THAT AS A CATEGORY OF INFORMATION, BUT YOU KNOW
12:26PM 8 THAT MR. BALWANI KNOWS ABOUT THAT. IT ISN'T THAT THEY WERE
12:26PM 9 JUST OCCURRING.

12:26PM 10 MR. BALWANI IS ON EMAILS WHERE THEY'RE TALKING ABOUT WHICH
12:26PM 11 DEVICES TO PUT IN THE ROOMS AND THEN WHICH APPS TO RUN ON THE
12:26PM 12 DEVICES, THE DEMO APP OR THE NULL PROTOCOL, SO THAT THEY COULD
12:26PM 13 HIDE THESE ERRORS FROM THE VIP'S IN THE ROOM SO THAT THE VIP'S
12:26PM 14 WOULDN'T SEE THE EDISON FAIL AS OFTEN AS THE EDISON WAS
12:26PM 15 FAILING. FURTHER INTENT TO DECEIVE EVIDENCE.

12:26PM 16 YOU'VE SEEN EVIDENCE THAT THERANOS WAS CORRECTING LAB
12:26PM 17 REPORTS, BUT SEE THAT BALWANI IS ON THOSE EMAILS ALSO. SO
12:26PM 18 THERE WERE INSTANCES WHEN AN INDIVIDUAL PATIENT, TWO SAMPLES
12:26PM 19 FROM THE SAME PATIENT OR THE SAME DONOR, PRODUCE DIFFERENT
12:27PM 20 RESULTS ON THERANOS'S DEVICES. THAT COULDN'T HAPPEN AT
12:27PM 21 THERANOS, AND THEY HAD TO CORRECT IT SO YOU COULD SEE.

12:27PM 22 HERE BOTH MR. EDLIN'S TESTIMONY ABOUT THIS EVENT, AND THE
12:27PM 23 EMAIL INTERNALLY THAT TRACKS THIS EVENT, AND HOW MR. BALWANI IS
12:27PM 24 BEING INFORMED THAT THIS KIND OF DISCREPANCY, WHEN THE DEVICES
12:27PM 25 ARE PRODUCING DIFFERENT RESULTS FROM THE SAME DONOR'S BLOOD

12:27PM 1 TAKEN AT THE SAME TIME, AND THEY JUST HAVE TO CORRECT THE
12:27PM 2 RESULTS, THEY JUST HAVE TO CHANGE THE NUMBERS THAT THEY'RE
12:27PM 3 GETTING.

12:27PM 4 YOU ALSO HEARD ABOUT THIS INSTANCE WHEN INDIVIDUALS FROM A
12:27PM 5 COMPANY CALLED BDT WENT TO WALGREENS TO GET A BLOOD TEST. AND
12:27PM 6 THIS IS ANOTHER INSTANCE WHEN THE EMAIL, WHEN THE EXHIBIT WAS
12:27PM 7 ADMITTED THE JUDGE TURNED TO YOU AND SAID IT'S NOT BEING
12:27PM 8 ADMITTED FOR THE TRUTH, IT'S BEING ADMITTED FOR A LIMITED
12:27PM 9 PURPOSE, FOR FALSITY FOR THE DEFENDANT'S KNOWLEDGE.

12:27PM 10 AND WHAT YOU'LL SEE HERE, NOTICE THAT A WITNESS FROM BDT
12:28PM 11 DIDN'T COME AND TESTIFY. SO I DON'T WANT YOU TO READ OR LISTEN
12:28PM 12 TO WHAT I'M GOING TO READ TO YOU IN A MOMENT AND SAY THESE
12:28PM 13 EVENTS OCCURRED, BECAUSE SOMEONE FROM BDT DIDN'T COME INTO THE
12:28PM 14 COURTROOM AND TELL YOU I WORKED AT BDT AND I WENT TO WALGREENS
12:28PM 15 AND LET ME TELL YOU WHAT I OBSERVED.

12:28PM 16 THE POINT OF THIS EMAIL IS THE INCREDIBLY DECEPTIVE NATURE
12:28PM 17 OF THE CONTENT OF THE COMMUNICATION, AND IT'S FREELY DISCUSSED
12:28PM 18 WITH SUNNY BALWANI.

12:28PM 19 SO BDT IS GOING TO GO INTO A WALGREENS AND GET BLOOD
12:28PM 20 TESTS. AND YOU CAN SEE MS. HOLMES'S BROTHER, CHRISTIAN HOLMES,
12:28PM 21 IS THE AUTHOR OF THIS EMAIL, AND HE'S COMMUNICATING WITH HOLMES
12:28PM 22 AND BALWANI.

12:28PM 23 AND WHAT HE WRITES IS, "ALSO WANTED TO SEND ALONG OUR
12:28PM 24 THOUGHTS FOR HOW TO ACCOMPLISH THE FINGERSTICK IN THE SCENARIO
12:28PM 25 THEIR ORDERS PROMPT VENOUS. ASSUMPTIONS HERE FROM EAH,"

12:28PM 1 ELIZABETH HOLMES, "ARE THAT WE MUST NOT DO VENOUS DRAW, AND WE
12:28PM 2 CANNOT TELL THEM THEIR ORDER PROMPTS VENOUS IF IT DOES. THE
12:29PM 3 FOLLOWING IS THE ACTION PLANNING TO ACCOMPLISH THIS."

12:29PM 4 SO IMAGINE THESE VIP VISITORS ARE GOING INTO WALGREENS
12:29PM 5 WALGREENS. THERANOS DOES NOT KNOW WHAT TESTS THEY'RE GOING TO
12:29PM 6 BE ORDERING, SO THEY PRESENT A LAB ORDER FORM THAT HAS SIX
12:29PM 7 TESTS. AND SOME OF THOSE TESTS ARE GOING TO REQUIRE A VEIN
12:29PM 8 DRAW AND SOME MAY REQUIRE A FINGERSTICK.

12:29PM 9 AND WHAT THEY'RE PLANNING FOR IS ALL WE CAN DO WITH THESE
12:29PM 10 PEOPLE IS A FINGERSTICK. SO WHAT DO WE DO WHEN THEY WALK INTO
12:29PM 11 A WALGREENS AND THEIR ORDER PROMPTS SOMETHING ELSE? IT
12:29PM 12 CONCLUDES TESTS THAT PROMPTED VENOUS DRAW, AND WHAT IS BEING
12:29PM 13 DISCUSSED INTERNALLY WITH MR. BALWANI IS WHAT TO DO IN THAT
12:29PM 14 SCENARIO.

12:29PM 15 AND LOOK AT WHAT IS SUGGESTED.

12:29PM 16 "IF THEY NOTICE MISSING TESTS ON THE RECEIPT, THEY MAY ASK
12:29PM 17 THE WAG," WALGREENS, "TECH ABOUT IT. WORST CASE THEY WOULD
12:29PM 18 MAKE A CALL TO CS AND ANAM WOULD TELL THEM EVERYTHING IS FINE.
12:30PM 19 CIARA WILL ALSO BE ABLE TO COME OUT OF THE DRAW ROOM ONCE
12:30PM 20 CHECK-IN IS COMPLETE TO WELCOME THEM INTO THE ROOM AND DISTRACT
12:30PM 21 THEM FROM LOOKING AT THE RECEIPT."

12:30PM 22 SO IF THEY TAKE OUT THE VENOUS DRAWS AND THE PATIENTS COME
12:30PM 23 IN AND HAVE ONLY THE FINGERSTICK DONE, THEY'RE COMING UP WITH A
12:30PM 24 WAY TO ACTUALLY DISTRACT PEOPLE FROM LOOKING AT THE RECEIPT SO
12:30PM 25 THEY DON'T NOTICE THE MISSING TESTS.

12:30PM 1 IF THIS WAS AN HONEST COMPANY, IF THIS WAS A COMPANY THAT
12:30PM 2 WASN'T DOING WHAT THE GOVERNMENT IS ALLEGING THAT THEY DO AND
12:30PM 3 THEY DID, THIS KIND OF EMAIL WOULDN'T HAVE BEEN SENT. THERE
12:30PM 4 WOULD HAVE BEEN SUCH A LACK OF COMFORT IN SENDING THIS EMAIL TO
12:30PM 5 HOLMES, TO BALWANI IF SOMEONE LIKE CHRISTIAN HOLMES DIDN'T KNOW
12:30PM 6 IT WAS GOING TO BE WELL RECEIVED.

12:30PM 7 YOU KNOW, YOU WOULDN'T SEND THIS KIND OF EMAIL UNLESS YOU
12:30PM 8 KNEW MR. BALWANI WAS GOING TO BE OKAY WITH IT.

12:30PM 9 THE DEPARTMENT OF DEFENSE WAS ALSO A SOURCE OF FALSE
12:30PM 10 STATEMENTS. YOU KNOW THAT INVESTORS THOUGHT THAT THERANOS WAS
12:31PM 11 TESTING, ITS TECHNOLOGY WAS BEING USED BY THE MILITARY ON
12:31PM 12 DEPLOYED SOLDIERS ON MEDEVAC HELICOPTERS IN THE TREATMENT OF
12:31PM 13 SOLDIERS IN THE BATTLEFIELD. AND LOOK AT SOME OF THE
12:31PM 14 STATEMENTS THAT WERE COMMUNICATED TO THE DEPARTMENT OF DEFENSE
12:31PM 15 AS PART OF THAT RELATIONSHIP.

12:31PM 16 THIS ONE YOU HEARD WENT TO SPECIAL OPERATIONS COMMAND.

12:31PM 17 "THERANOS HAS CREATED A POINT-OF-SERVICE LABORATORY
12:31PM 18 INFRASTRUCTURE THAT GENERATES REAL-TIME DATA FROM A FINGERSTICK
12:31PM 19 OF BLOOD OR OTHER MICRO-VOLUMES OF DIFFERENT SAMPLE TYPES
12:31PM 20 DELIVERING HIGHER QUALITY DATA THAN PREVIOUSLY POSSIBLE."

12:31PM 21 SO THAT WAS COMMUNICATED TO THE DOD.

12:31PM 22 AND THE FIRST BULLET, "EACH THERANOS DEVICE CAN RUN EVERY
12:31PM 23 TEST CURRENTLY AVAILABLE THROUGH THE TRADITIONAL CENTRALIZED OR
12:31PM 24 HOSPITAL LABORATORY INFRASTRUCTURE IT."

12:31PM 25 YOU KNOW THAT BULLET IS A FALSE STATEMENT. YOU KNOW THAT

12:31PM 1 EACH THERANOS DEVICE COULD NOT RUN EACH TEST, THAT'S WHY THEY
12:31PM 2 USED THIRD PARTY DEVICES AND MODIFIED THIRD PARTY DEVICES.

12:32PM 3 SO, AGAIN, THE KINDS OF FALSE STATEMENTS THAT THE
12:32PM 4 DEPARTMENT OF DEFENSE ARE THE SAME KINDS OF FALSE STATEMENTS
12:32PM 5 THAT INVESTORS HEARD. IT'S NO ACCIDENT THAT THEY WERE ABLE TO
12:32PM 6 GET THE DEPARTMENT OF DEFENSE TO ENGAGE IN SOME RELATIONSHIPS.
12:32PM 7 YOU'VE HEARD ABOUT THE AMERICAN BURN ASSOCIATION, FOR INSTANCE,
12:32PM 8 TO ENGAGE IN SOME BUSINESS RELATIONSHIP WITH THERANOS, BUT THEN
12:32PM 9 WHEN THERANOS, WHEN HOLMES AND BALWANI COMMUNICATED WITH
12:32PM 10 INVESTORS ABOUT THAT BUSINESS RELATIONSHIP, THEY MADE FALSE
12:32PM 11 STATEMENTS ABOUT IT.

12:32PM 12 INSTEAD OF THE VERY LIMITED WORK THAT THEY DID WITH THE
12:32PM 13 DEPARTMENT OF DEFENSE, THEY TOLD INVESTORS THAT THE TECHNOLOGY
12:32PM 14 WAS SAVING LIVES, THAT IT WAS DEPLOYED ON MEDEVAC HELICOPTERS
12:32PM 15 AND ON THE BATTLEFIELD.

12:32PM 16 EDLIN TOLD YOU ABOUT THE REALITY OF THE RELATIONSHIP,
12:32PM 17 WHAT, IN FACT, THERANOS DID WITH THE MILITARY, AND HE EXPLAINED
12:32PM 18 HOW THE TECHNOLOGY WAS NOT BEING USED TO CLINICALLY TREAT
12:33PM 19 DEPLOYED SOLDIERS, HOW THE DEVICES WERE NOT IN A WAR ZONE FOR
12:33PM 20 CLINICAL USE OR ON THE BATTLEFIELD, HOW IT DIDN'T SEND DEVICES
12:33PM 21 INTO THE MIDDLE EAST, SOMETHING THAT INVESTORS HEARD, AND IT
12:33PM 22 WAS NEVER ON A MEDEVAC HELICOPTER OR DIFFERENT MILITARY
12:33PM 23 HELICOPTER.

12:33PM 24 SO EDLIN PROVIDED THE OTHER SIDE OF THE STORY. YOU HEARD
12:33PM 25 FROM INVESTORS WHAT THEY HEARD, WHAT THEY UNDERSTOOD, BUT EDLIN

12:33PM 1 TOLD YOU WHAT THE REALITY WAS.

12:33PM 2 AND HERE ARE THE INVESTORS THAT HEARD FALSE STATEMENTS
12:33PM 3 ABOUT THE MILITARY: TOLBERT, LUCAS, PETERSON, AND GROSSMAN ALL
12:33PM 4 HEARD ONE FORM -- ONE VERSION OR ANOTHER OF THIS STORY THAT
12:33PM 5 THERANOS TECHNOLOGY WAS DEPLOYED ACTUALLY TREATING SOLDIERS IN
12:33PM 6 THE BATTLEFIELD, SOMETIMES ON MEDEVAC HELICOPTERS.

12:33PM 7 YOU HEARD THE THERANOS-WALGREENS BUSINESS RELATIONSHIP.
12:33PM 8 WALGREENS WAS EXPECTING THAT THE TEST WOULD BE DONE RAPIDLY ON
12:33PM 9 A FINGERSTICK AND HOW WHAT WAS COMMUNICATED TO WALGREENS WAS
12:34PM 10 UNTRUE, AND, THEREFORE, MR. BALWANI DID NOT NEED TO WAIT FOR
12:34PM 11 WALGREENS TO DISCOVER THAT IT WAS A FRAUD TO KNOW THAT 900
12:34PM 12 STORES WAS UNREASONABLE, BECAUSE THESE STATEMENTS, WHAT WAS
12:34PM 13 COMMUNICATED TO WALGREENS WAS NOT TRUE.

12:34PM 14 SO WALGREENS WAS TOLD IN THE DOCUMENT ON THE LEFT THAT
12:34PM 15 THERANOS HAD THE ABILITY TO RUN BLOOD TESTS FROM A FINGERSTICK
12:34PM 16 IN LESS THAN AN HOUR AT WALGREENS PHARMACIES, AND JHAVERI TOLD
12:34PM 17 YOU IN 2013 WHEN HE WAS OPERATIONALIZING THE RELATIONSHIP, THAT
12:34PM 18 WAS CONSISTENT WITH HIS UNDERSTANDING, THAT'S WHAT HE THOUGHT
12:34PM 19 THERANOS COULD DO.

12:34PM 20 AND YOU SEE IN THE SERVICES AGREEMENT, THE DOCUMENT
12:34PM 21 ITSELF, THAT THE TWO COMPANIES SIGNED, THE PHRASE "DEVICE" WAS
12:34PM 22 DEFINED, AND JHAVERI TOLD YOU THIS ALSO WAS CONSISTENT WITH HIS
12:34PM 23 UNDERSTANDING OF WHAT THE THERANOS TECHNOLOGY WAS, THAT IT WAS
12:34PM 24 THE THERANOS ANALYZER, THE PATIENT INTERFACE AND SAMPLE
12:34PM 25 COLLECTION TOOLS, NOT SOME THIRD PARTY DEVICES AND NOT SOME

MODIFIED THIRD PARTY DEVICES.

SO WALGREENS WAS ALSO DECEIVED. AND IT WOULDN'T TAKE WALGREENS FIGURING IT OUT FOR BALWANI TO KNOW THAT HIS STATEMENTS TO INVESTORS ABOUT FUTURE REVENUE WERE ALSO FALSE AND MISLEADING.

THERE'S THE USE OF THE MEDIA SPECIFICALLY BY MR. BALWANI TO BE DECEITFUL. THERE'S AN INSTANCE HERE WHERE MR. BALWANI FOUND AN ARTICLE ONLINE THAT TALKED ABOUT THERANOS, AND HE HIMSELF SENDS IT TO WALGREENS EXECUTIVES AND THE ARTICLE ITSELF CONTAINS FALSE STATEMENTS ABOUT THERANOS'S TECHNOLOGY.

IN THAT SECOND HIGHLIGHTED SECTION DO YOU SEE, "BLOOD IS DRAWN WITH A FINGERSTICK, RATHER THAN A NEEDLE IN THE ARM. THERE ARE NO PHLEBOTOMISTS, ONLY MACHINES IN THERANOS LABS."

IT TALKS ABOUT HAVING LAB RESULTS FROM FRESH SAMPLES IN A MATTER OF HOURS. SO ALL OF THESE FALSE STATEMENTS THAT ARE APPEARING IN THE MEDIA, MR. BALWANI IS SHARING WITH WALGREENS BECAUSE HE KNOWS THIS IS CONSISTENT WITH WHAT WALGREENS THINKS THAT THERANOS TECHNOLOGY CAN DO.

MR. BALWANI WAS TELLING DIFFERENT THINGS TO MR. JHAVERI THAN HE WAS SAYING TO ELIZABETH HOLMES. WHAT MR. BALWANI WAS SAYING IN THE TEXT MESSAGES TO ELIZABETH HOLMES WAS THAT THERE WERE PROBLEMS IN THE THERANOS LAB, THAT THERE WERE PROBLEMS IN THE CALL CENTER, THAT CUSTOMER SERVICE IS HAVING PROBLEMS, AND THAT NONE OF THIS INFORMATION IS COMMUNICATED TO MR. JHAVERI, HIS POINT OF CONTACT AT WALGREENS. AGAIN, IT'S NOT ABOUT

12:36PM 1 WALGREENS EVENTUALLY FINDING THIS OUT. IT'S MR. BALWANI
12:36PM 2 HIMSELF KNOWS THAT HE'S BEEN DECEIVING WALGREENS, AND HE
12:36PM 3 EVENTUALLY EVEN HEARS THAT DIRECTLY FROM WALGREENS.

12:36PM 4 IN THIS TEXT MESSAGE ON OCTOBER 16TH, 2015, WHICH IS THE
12:37PM 5 DAY AFTER THE NEGATIVE "WALL STREET JOURNAL," MR. BALWANI
12:37PM 6 WRITES TO MS. HOLMES, "OK. WAG FREAKING OUT. LACK OF
12:37PM 7 TRANSPARENCY.

12:37PM 8 "WHY WE DIDN'T TELL THEM ABOUT TURNING OFF THE
12:37PM 9 NANOTAINER," THE SMALL COLLECTION DEVICE THAT THERANOS WAS
12:37PM 10 USING.

12:37PM 11 SO THE NEGATIVE "WALL STREET JOURNAL" COMES OUT.
12:37PM 12 WALGREENS IS LEARNING THINGS. IN THAT ARTICLE AND IN
12:37PM 13 MR. BALWANI'S WORDS, "FREAKING OUT."

12:37PM 14 IT WAS ONLY A MATTER OF TIME FOR WALGREENS TO LEARN THE
12:37PM 15 TRUTH. THEY DIDN'T LEARN IT FROM THERANOS. THEY LEARNED IT
12:37PM 16 FROM THE MEDIA. AND THAT WAS WHAT MR. BALWANI ALWAYS KNEW
12:37PM 17 WOULD OCCUR AND THAT THE RELATIONSHIP WITH WALGREENS WOULD END
12:37PM 18 WHEN THEY FOUND OUT THE TRUTH.

12:37PM 19 SO HIS ESTIMATES OF FINANCIAL REVENUE WERE ALL CONTINGENT
12:37PM 20 UPON SUCCESSFULLY CONTINUING TO ALSO DEFRAUD WALGREENS.

12:37PM 21 WHEN MR. BALWANI WAS MAKING THESE 900 STORE PROJECTIONS TO
12:37PM 22 PEOPLE LIKE PETERSON, HE WAS DOING THAT IN OCTOBER OF 2014
12:38PM 23 AFTER HE WAS ALREADY RECEIVING SIGNALS FROM WALGREENS THAT THEY
12:38PM 24 WERE DISSATISFIED. THEY KNEW THAT -- MR. BALWANI KNEW THAT
12:38PM 25 WALGREENS WAS TRACKING VEIN DRAW PERCENT, HE KNEW THAT

12:38PM 1 EXPANSION OR NATIONAL ROLLOUT WAS NOT GUARANTEED. THAT WAS IN
12:38PM 2 THE CONTRACTS.

12:38PM 3 BUT IN AUGUST OF 2014 HE'S TOLD THAT WALGREENS IS
12:38PM 4 SHRINKING THE NEXT ROLLOUT FROM 500 STORES TO 200 STORES, AND
12:38PM 5 HE WROTE IN A TEXT MESSAGE THAT THERANOS CAN'T SCALE WITH
12:38PM 6 WALGREENS.

12:38PM 7 SO MR. BALWANI IS STILL SHARING IN OCTOBER OF '14
12:38PM 8 PROJECTIONS THAT ASSUMES 900 WALGREENS STORES WHEN HE'S
12:38PM 9 RECEIVING DIRECT INFORMATION FROM WALGREENS THAT ARE SUGGESTING
12:38PM 10 EVERYTHING BUT, THAT THE RELATIONSHIP ISN'T WORKING, THAT THERE
12:38PM 11 ARE PROBLEMS THAT THEY'RE DISCOVERING DURING THE PILOT.

12:38PM 12 AND MR. BALWANI IS TEXTING THAT. HE'S ACKNOWLEDGING THAT
12:38PM 13 IN TEXT MESSAGES TO HOLMES. HE'S NOT ACKNOWLEDGING IT IN HIS
12:39PM 14 CONVERSATIONS WITH INVESTORS, BUT IN HIS TEXT MESSAGES WITH
12:39PM 15 HOLMES HE'S SAYING THAT THEY CANNOT SCALE WITH WAG. THEY ARE
12:39PM 16 TERRIBLE, AND WE NEED SAFEWAY AND CVS.

12:39PM 17 THAT WALGREENS IS INFORMING THERANOS THAT THEY'RE NOT
12:39PM 18 GOING TO SCALE MORE.

12:39PM 19 AND THEN AT SOME POINT HE'S GOING THROUGH A CVS CONTRACT
12:39PM 20 AND HE WRITES, "WE CAN'T WORK WITH WAG OR CVS. BOTH ARE THE
12:39PM 21 SAME."

12:39PM 22 SO MR. BALWANI IS RECEIVING FEEDBACK FROM WALGREENS THAT
12:39PM 23 THE RELATIONSHIP IS NOT GOING WELL. MR. BALWANI IS
12:39PM 24 COMMUNICATING TO MS. HOLMES THAT THE RELATIONSHIP IS NOT GOING
12:39PM 25 WELL, BUT THE ONE GROUP WHO IS NOT INFORMED OF THAT ARE THE

12:39PM 1 INVESTORS. THE INVESTORS ARE STILL BEING TOLD THAT WE'RE GOING
12:39PM 2 TO HAVE A BILLION DOLLARS OF REVENUE NEXT YEAR BASED ON THE
12:39PM 3 SUCCESS OF THIS WALGREENS RELATIONSHIP.

12:39PM 4 THE INVESTORS ARE BEING TOLD, IN THIS CASE BRYAN TOLBERT,
12:39PM 5 EXPLICITLY THAT THERANOS WELLNESS CENTERS WILL SOON BE LOCATED
12:39PM 6 WITHIN WALGREENS STORES NATIONWIDE. SO EVEN INVESTORS ASIDE
12:40PM 7 FROM LISA PETERSON IN THE 900 STORE PROJECTIONS, OTHER
12:40PM 8 INVESTORS ARE RECEIVING DOCUMENTS THAT ARE MAKING
12:40PM 9 REPRESENTATIONS ABOUT A NATIONAL ROLLOUT WITH WALGREENS WHEN
12:40PM 10 MR. BALWANI IS RECEIVING EVERY INDICATION THAT THE RELATIONSHIP
12:40PM 11 IS NOT GOING WELL.

12:40PM 12 INVESTORS ALSO HEARD FALSE STATEMENTS ABOUT THE USE OF
12:40PM 13 THIRD PARTY DEVICES. REMEMBER THE INVESTORS THOUGHT THAT THEY
12:40PM 14 WERE INVESTING IN A COMPANY THAT HAD DEVELOPED ITS OWN BLOOD
12:40PM 15 TESTING DEVICE TO DO ITS OWN BLOOD TESTING. EACH OF THESE
12:40PM 16 INVESTORS ACROSS THE TOP, PETERSON, MENDENHALL, GROSSMAN, AND
12:40PM 17 THEN BELOW MOSLEY, EISENMAN, AND LUCAS, EACH OF THEM HEARD ONE
12:40PM 18 VERSION OR ANOTHER OF THERANOS LACK OF USE OF THIRD PARTY
12:40PM 19 DEVICES.

12:40PM 20 WE'VE TALKED A BIT TODAY ABOUT THE IMPORTANCE OF THAT FOR
12:40PM 21 MR. GROSSMAN IN MEASURING THE AMOUNT OF REAL ESTATE THAT
12:40PM 22 THERANOS WOULD NEED TO LEASE, BUT THE SAME FALSE STATEMENTS
12:41PM 23 WERE HEARD BY OTHER INVESTORS, AND THEY WERE COMMUNICATED FOR
12:41PM 24 THE SAME PURPOSE, WITH AN INTENT TO DEFRAUD, BECAUSE INVESTORS
12:41PM 25 THOUGHT THEY WERE INVESTING IN A COMPANY WITH MATURE

12:41PM 1 TECHNOLOGY, WITH A COMPANY THAT HAD ITS OWN DEVICE TO TEST
12:41PM 2 PATIENT BLOOD, NOT INVESTING IN A COMPANY THAT WOULDN'T PRODUCE
12:41PM 3 ACCURATE RESULTS AND THEN ON OTHER OCCASIONS JUST USED THIRD
12:41PM 4 PARTY DEVICES.

12:41PM 5 MR. BALWANI ALSO MADE STATEMENTS DIRECTLY TO INVESTORS
12:41PM 6 ABOUT THE USE OF THIRD PARTY DEVICES. I WANT TO REMIND YOU
12:41PM 7 ABOUT SOME SPECIFIC STATEMENTS HE MADE TO MENDENHALL ON THIS
12:41PM 8 PRECISE TOPIC.

12:41PM 9 WHEN BALWANI TOLD MENDENHALL THAT THE SCIENCE WAS
12:41PM 10 COMPLETE, THAT NO NEW TECHNOLOGY WAS NEEDED, THAT WAS NOT
12:41PM 11 BECAUSE THERANOS WAS GOING TO USE THIRD PARTY DEVICES. THAT
12:41PM 12 WAS BECAUSE THERANOS'S DEVICE WAS READY TO GO. THAT'S WHAT
12:41PM 13 MENDENHALL UNDERSTOOD.

12:41PM 14 AND MR. BALWANI WENT FURTHER AND TALKED ABOUT THE
12:41PM 15 MANUFACTURING OF THERANOS DEVICES, HOW THERE WOULDN'T BE
12:41PM 16 THREATS, SUPPLY CHAIN ISSUES, BECAUSE THEY WERE HANDLING THEIR
12:42PM 17 OWN MANUFACTURING. AGAIN, THAT WOULDN'T BE TRUE IF THERANOS
12:42PM 18 WAS USING THIRD PARTY DEVICES.

12:42PM 19 THERE WERE ALSO FALSE STATEMENTS COMMUNICATED TO INVESTORS
12:42PM 20 REGARDING PHARMA VALIDATION, THAT THERANOS WAS VALIDATED BY
12:42PM 21 PHARMACEUTICAL COMPANIES. INSIDE OF THE INVESTOR BINDERS WERE
12:42PM 22 THESE REPORTS LIKE THIS ONE, FOR INSTANCE, WHICH IS THE ONE
12:42PM 23 THAT MR. MOSLEY RELIED UPON. SO WHEN MR. BALWANI AND HOLMES
12:42PM 24 ARE TALKING ABOUT THE CONTENT OF INVESTOR BINDERS AND WHEN
12:42PM 25 MR. BALWANI IS SHARING INVESTOR BINDERS WITH INVESTORS AND

12:42PM 1 THOSE INVESTORS BINDERS CONTAIN THESE KIND OF STATEMENTS THAT
12:42PM 2 THERANOS'S TECHNOLOGY HAVE BEEN VALIDATED BY PHARMACEUTICAL
12:42PM 3 COMPANIES, AND THEN SPECIFICALLY REPORTS THAT ARE HELD OUT AS
12:42PM 4 HAVING BEEN PREPARED BY THE PHARMA COMPANIES VALIDATION OF
12:42PM 5 THERANOS'S TECHNOLOGY, THIS IS ALL DONE WITH THE INTENT TO
12:42PM 6 DECEIVE AND CHEAT THE INVESTORS.

12:43PM 7 THE SAME IS TRUE FOR THE MEDIA ARTICLES. WE'VE LOOKED AT
12:43PM 8 THESE FALSE STATEMENTS IN MEDIA ARTICLES AND THESE ARTICLES
12:43PM 9 WERE COMMUNICATED FROM HOLMES AND BALWANI TO INVESTORS WITH THE
12:43PM 10 INTENT TO DECEIVE, WITH THE INTENT THAT THE INVESTORS WOULD GET
12:43PM 11 ADDITIONAL INFORMATION OR CORROBORATE INFORMATION THAT THEY
12:43PM 12 HEARD FROM HOLMES AND BALWANI THROUGH THESE SOURCES IN THE
12:43PM 13 MEDIA.

12:43PM 14 AND YOU SEE HERE, HERE IS WHERE THE INVESTORS RECEIVED
12:43PM 15 THAT INFORMATION, SOMETIMES IN EMAILS DIRECTLY FROM THERANOS,
12:43PM 16 AND SOMETIMES AS AN ARTICLE ON THE THERANOS WEBSITE, AND
12:43PM 17 SOMETIMES IN THE INVESTOR BINDERS.

12:43PM 18 THE FOURTH AND FINAL ELEMENT FOR THE WIRE FRAUD AS TO
12:43PM 19 INVESTORS IS THE ELECTRONIC WIRE CROSSING STATE LINES.

12:43PM 20 THE GOVERNMENT MUST PROVE THAT THE DEFENDANT USED OR
12:43PM 21 CAUSED TO BE USED AN INTERSTATE WIRE TO CARRY OUT OR ATTEMPT TO
12:43PM 22 CARRY OUT AN ESSENTIAL PART OF THE SCHEME AND WIRES INCLUDES
12:44PM 23 INTERNET, TELEPHONE, FAX, OTHER THINGS.

12:44PM 24 AND IN THIS CASE, AS I MENTIONED TO YOU, RIGHT AROUND THE
12:44PM 25 TIME THAT THE GOVERNMENT RESTED, THE JUDGE READ TO YOU A

12:44PM 1 STIPULATION OF THE PARTIES, AND I'M SHOWING IT TO YOU ON THE
12:44PM 2 SCREEN NOW.

12:44PM 3 AND WHAT THE PARTIES STIPULATED TO IS THAT CERTAIN WIRE
12:44PM 4 TRANSFERS, CERTAIN ELECTRONIC FUNDS TRANSFERS THAT OCCURRED IN
12:44PM 5 THIS CASE CROSSED STATE LINES.

12:44PM 6 AND ON THE SCREEN YOU SEE SEVEN OF THEM. THE FIRST SIX
12:44PM 7 ARE ALL SIX OF THE INVESTOR COUNTS. SO EACH INVESTOR WIRED
12:44PM 8 MONEY TO THERANOS. AND YOU SEE HERE THE FIRST ONE IS FROM
12:44PM 9 ALAN EISENMAN'S BANK ACCOUNT AT CHARLES SCHWAB, AND THAT GOES
12:44PM 10 TO THERANOS'S ACCOUNT AT COMERICA BANK.

12:44PM 11 AND BASED ON THE INFORMATION HIGHLIGHTED ON THE RIGHT SIDE
12:44PM 12 OF THE SCREEN, THESE WIRES CROSSED STATE LINES, AND THAT
12:45PM 13 REPEATED SIX TIMES. SO ALL SIX OF THE INVESTOR WIRES CREATED A
12:45PM 14 WIRE THAT CROSSED STATE LINES.

12:45PM 15 THE SEVENTH WIRE THAT IS LISTED THERE, IT'S IN AUGUST OF
12:45PM 16 2015 FOR A LITTLE OVER A MILLION DOLLARS WAS A WIRE OF THERANOS
12:45PM 17 SPENDING MONEY, THIS IS FROM THE THERANOS BANK ACCOUNT TO
12:45PM 18 HORIZON MEDIA. AND THIS WIRE ALSO, BASED ON THIS STIPULATION,
12:45PM 19 CROSSED STATE LINES. THIS IS COUNT 12 IN THE INDICTMENT. SO
12:45PM 20 THIS BELONGS IN THE PATIENT COUNTS.

12:45PM 21 AND I'LL SHOW YOU LATER THE SPECIFIC EMAIL THAT DEALS WITH
12:45PM 22 THIS HORIZON MEDIA COUNT THAT TALKS ABOUT THE PURPOSE OF THE
12:45PM 23 WIRE. BUT FOR RIGHT NOW I JUST WANT TO SHOW YOU THAT THIS IS
12:45PM 24 ALSO CAPTURED IN THAT STIPULATION OF THE PARTIES. SO THIS WIRE
12:45PM 25 ALSO CROSSED STATE LINES, AND, THEREFORE, THE FOURTH ELEMENT

12:45PM 1 FOR THE TWELFTH COUNT, THE HORIZON MEDIA COUNT, THE INTERSTATE
12:46PM 2 NEXUS ELEMENT IS ALSO SATISFIED BASED ON THAT STIPULATION.

12:46PM 3 THAT'S THE INVESTOR COUNTS.

12:46PM 4 THE FINAL SET OF COUNTS THAT WE HAVE TO DISCUSS ARE THE
12:46PM 5 FOUR COUNTS RELATED TO PATIENTS. AND I TOLD YOU THAT THE
12:46PM 6 ELEMENTS MIRROR -- THE ELEMENTS ARE THE SAME FOR WIRE FRAUD AS
12:46PM 7 TO INVESTORS AND WIRE FRAUD AS TO PATIENTS, SO IT'S THESE SAME
12:46PM 8 FOUR ELEMENTS, ALTHOUGH I'VE BROKEN OUT THAT FIRST ELEMENT TO
12:46PM 9 COVER WITH YOU BOTH THE EXISTENCE OF A SCHEME TO DEFRAUD AND
12:46PM 10 ALSO MR. BALWANI'S KNOWLEDGE OF THAT SCHEME, BUT THESE SAME
12:46PM 11 FOUR ELEMENTS APPLY TO THE PATIENT WIRE FRAUD COUNTS.

12:46PM 12 THESE ARE THE FOUR PATIENT WIRE FRAUD COUNTS. YOUR
12:46PM 13 VERDICT FORM WILL HAVE THE PATIENT NAMES ON THERE. SO YOU WILL
12:46PM 14 SEE THAT PATIENT -- I'M SORRY, FOR COUNT NINE, THE PATIENT IS
12:46PM 15 MR. BINGHAM, AND TEN IS MS. TOMPKINS, ELEVEN IS DR. ELLSWORTH,
12:47PM 16 AND TWELVE IS THE HORIZON MEDIA PURCHASE.

12:47PM 17 LET'S TALK ABOUT WHAT EACH OF THESE SPECIFIC WIRES
12:47PM 18 INVOLVES. THE BINGHAM WIRE IS A PHONE CALL. MR. BINGHAM HAD
12:47PM 19 QUESTIONS ABOUT HIS LAB TESTS SO HE CALLED CUSTOMER SERVICE IN
12:47PM 20 PALO ALTO, AND WE'LL TALK ABOUT THAT IN A MOMENT.

12:47PM 21 THE NEXT TWO WIRES ARE FAXES. YOU HEARD THAT FOR BOTH
12:47PM 22 ELLSWORTH AND TOMPKINS'S BLOOD TESTS THEY WERE FAXED TO
12:47PM 23 THERANOS FROM THE DOCTOR'S OFFICE, AND I'LL SHOW YOU ON THE LAB
12:47PM 24 FORM IT LISTS THE FAXES. SO THOSE FAXES CONTAINING THE LAB
12:47PM 25 TEST RESULTS WENT FROM CALIFORNIA TO ARIZONA.

12:47PM 1 AND THEN FINALLY WE JUST TALKED ABOUT THE HORIZON MEDIA
12:47PM 2 PURCHASE.

12:47PM 3 SO THERE WAS ALSO A SCHEME TO DEFRAUD PATIENTS, AND IT WAS
12:48PM 4 BASED ON SEVERAL THINGS: ONE, USING ELECTRONIC WIRES TO
12:48PM 5 PURCHASE ADVERTISEMENTS TO INDUCE PATIENTS TO PURCHASE BLOOD
12:48PM 6 TESTS; TO USE THE THERANOS WEBSITE, BUT THEY ALSO RECRUITED
12:48PM 7 PATIENTS THROUGH THE THERANOS WEBSITE, THROUGH MARKETING
12:48PM 8 MATERIALS, PATIENT BROCHURES AND ALSO THROUGH THE MEDIA,
12:48PM 9 THROUGH THE USE OF THE MEDIA.

12:48PM 10 JUST LIKE AN ARTICLE IN THE MEDIA WOULD TALK ABOUT
12:48PM 11 THERANOS'S ACCURACY, AND THAT WOULD BE USEFUL FOR AN INVESTOR
12:48PM 12 TO HEAR, A PATIENT WOULD READ IN THE MEDIA THAT THERANOS'S
12:48PM 13 TESTING WAS ACCURATE AND ALSO MAKE A DECISION TO USE THERANOS
12:48PM 14 AS A LAB OR BLOOD TESTING SERVICE AND USE THAT AS WELL.

12:48PM 15 AND THEN FINALLY, THERANOS SENT OVER FAXED BLOOD TESTS
12:48PM 16 RESULTS THAT THEY KNEW WERE LIKELY TO CONTAIN INACCURATE OR
12:48PM 17 UNRELIABLE BLOOD TESTS THAT HAPPENED IN INSTANCES THAT YOU
12:48PM 18 HEARD TESTIMONY ABOUT FROM TOMPKINS AND ELLSWORTH. WE'LL TALK
12:49PM 19 ABOUT THAT MORE IN A MOMENT.

12:49PM 20 FIRST, LET'S START BY IDENTIFYING WHO IS RESPONSIBLE FOR
12:49PM 21 THERANOS'S MARKETING MATERIALS.

12:49PM 22 DAN EDLIN TOLD YOU THAT PART OF HIS JOB AT THERANOS WAS TO
12:49PM 23 WORK WITH A COMPANY CALLED CHIAT/DAY, THAT'S WHO THERANOS HIRED
12:49PM 24 TO PERFORM, TO CREATE THEIR MARKETING MATERIALS. AND THERE ARE
12:49PM 25 ONLY TWO PEOPLE AT THERANOS WHO COULD APPROVE THOSE KIND OF

MARKETING MATERIALS: HOLMES AND BALWANI.

YOU'VE ALSO SEEN PATIENT BROCHURES THAT WERE USED TO RECRUIT PATIENTS AT WALGREENS, AND THOSE PATIENT BROCHURES CONTAINED PHRASES THAT IN OTHER DOCUMENTS THAT WE HAVE LOOKED AT THIS MORNING WERE WARNED, HOLMES AND BALWANI WERE WARNED AGAINST USING PHRASES LIKE "ONE TINY DROP," WHICH IS CONTAINED HERE IN THE PATIENT BROCHURE THAT IS IN FRONT OF YOU.

SO THEY'RE PUTTING INFORMATION IN THE PATIENT BROCHURES THAT THEY'VE BEEN TOLD IS MISLEADING, AND IT'S THE KIND OF INFORMATION THAT WOULD GET A PATIENT TO DECIDE TO USE THERANOS OVER A DIFFERENT LAB.

THESE SAME KIND OF FALSE STATEMENTS ALSO APPEARS ON THE THERANOS WEBSITE, THE SAME KIND OF INFORMATION THAT WOULD ENCOURAGE AN INVESTOR TO INVEST, AT TIMES WOULD ENCOURAGE A PATIENT TO USE THERANOS BLOOD TESTING SERVICES, THINGS LIKE "A FULL RANGE OF TESTS," OR "ONE TINY DROP," OR "HIGHEST LEVELS OF ACCURACY," THE KINDS OF STATEMENTS THAT YOU'VE SEEN MR. BALWANI ON EMAILS WHERE HE WAS WARNED AGAINST USING.

AND ARTICLES, AS I MENTIONED TO YOU, THE SAME KIND OF ARTICLES THAT BRAG ABOUT ACCURACY AND HAVE AN EFFECT ON INVESTORS ALSO HAVE AN EFFECT ON PATIENTS.

THERE'S ALSO TEXT MESSAGES WHERE HOLMES AND BALWANI DISCUSS KNOWING THE VALUE OF THEIR ADVERTISING, THE EFFECT THAT THE ADVERTISING HAS.

AND HERE YOU SEE MR. BALWANI SAYING, "WE CAN MARKET OUR

12:50PM 1 LAB AND EVERYTHING AND PEOPLE WILL TALK ABOUT OUR FINGERSTICK
12:50PM 2 WITHOUT US TALKING ABOUT IT."

12:50PM 3 SO HE'S ACKNOWLEDGING THAT YOU CAN SAY THINGS LIKE NOT
12:51PM 4 "ONE TINY DROP," YOU DON'T ACTUALLY HAVE TO SAY THE PHRASE
12:51PM 5 "FINGERSTICK," AND YOU'RE STILL GOING TO MAKE THIS SOUND
12:51PM 6 ATTRACTIVE TO PATIENTS.

12:51PM 7 IT'S SORT OF A SOPHISTICATED LEVEL OF UNDERSTANDING OF
12:51PM 8 THEIR DECEPTION, HOW THEY'RE GOING TO BE ABLE TO RECRUIT
12:51PM 9 PATIENTS THROUGH THE WORD CHOICE, THE WORDS THEY USE IN
12:51PM 10 ADVERTISING.

12:51PM 11 AND THEN HOLMES LATER WRITES, "I THINK WE SHOULD SHOW THEM
12:51PM 12 THE FIRST AD THAT'S GOING TO RUN IN ARIZONA. IT DOESN'T
12:51PM 13 MENTION NANOTAINERS OR FINGERSTICK. JUST LESS BLOOD, WHICH I
12:51PM 14 WILL MAKE A BIG DEAL ABOUT BEING ABOUT BUTTERFLY AND SMALLER
12:51PM 15 NEEDLES. BETTER FOR US TO SHOW THAN NOT."

12:51PM 16 SO, AGAIN, WHAT EDLIN TOLD YOU IS CORRECT. EDLIN TOLD YOU
12:51PM 17 THERE ARE ONLY TWO PEOPLE THAT COULD APPROVE ADVERTISING AND IN
12:51PM 18 THESE TEXT MESSAGES YOU SEE HOLMES AND BALWANI TALKING ABOUT AN
12:51PM 19 UNDERSTANDING OF THE CONTENT OF THAT ADVERTISING, AND NOT JUST
12:51PM 20 THE CONTENT OF IT, BUT THE EFFECT OF WHEN A PATIENT, WHEN A
12:52PM 21 FUTURE POTENTIAL PATIENT HEARS OUR ADVERTISING, WHAT ARE THEY
12:52PM 22 GOING TO THINK? WHAT EFFECT IS THAT GOING TO HAVE ON THEM?
12:52PM 23 THIS IS ALL PART OF THE SCHEME TO ENCOURAGE PATIENTS TO COME
12:52PM 24 USE THERANOS BLOOD TESTING SERVICES.

12:52PM 25 LET'S TALK ABOUT HOW BALWANI CONTROLLED THE CLIA LAB.

12:52PM 1 RUNNING THE CLIA LAB WAS INSTRUMENTAL IN HAVING THE PATIENT
12:52PM 2 FRAUD, YOU KNOW, FROM SEVERAL SOURCES. THE FIRST TWO DOCUMENTS
12:52PM 3 WERE SLIDES THAT WERE SHARED WITH CMS DURING THE INSPECTION IN
12:52PM 4 2015.

12:52PM 5 SO MR. BALWANI WAS INTERACTING WITH SARAH BENNETT, AND ON
12:52PM 6 THESE SLIDES YOU SEE MR. BALWANI BEING LISTED AS RESPONSIBLE
12:52PM 7 FOR ALL CLIA LAB OPERATIONS.

12:52PM 8 AND ON THE ORG CHART, MR. BALWANI ACTUALLY APPEARS TWICE.
12:52PM 9 MR. BALWANI'S NAME APPEARS AS PRESIDENT, SO ABOVE THE CLIA LAB.
12:52PM 10 BUT NOTICE HE'S ALSO LISTED UNDER THAT SECTION CALLED CLINICAL
12:52PM 11 LAB ASSISTANT. THAT'S THE JOB THAT ERIKA CHEUNG HAD.

12:53PM 12 SO MR. BALWANI WAS WEARING TWO HATS IN THE CLIA LAB, AND
12:53PM 13 THE EMAILS AND THE TEXT MESSAGES THAT YOU'VE SEEN FURTHER
12:53PM 14 SUGGEST THAT THAT GAVE HIM MORE INSIGHT, A UNIQUE PERSPECTIVE
12:53PM 15 INTO THE LAB BECAUSE OF THESE MULTIPLE HATS.

12:53PM 16 YOU SEE IN THESE TEXT MESSAGES YOU SEE HE'S AT NEWARK, YOU
12:53PM 17 HEARD NEWARK WAS WHERE THE LAB WAS, DOING REVIEWS AND
12:53PM 18 TERMINATIONS.

12:53PM 19 COMPARE THAT TO WHAT DR. ROSENDORFF TOLD YOU ABOUT HIS
12:53PM 20 EXPERIENCE GENERALLY, THAT AS A LAB DIRECTOR HE THOUGHT HE
12:53PM 21 WOULD BE EMPOWERED TO MAKE THESE KIND OF DECISIONS, HE SHOULD
12:53PM 22 BE HIRED IN THE LAB. BUT ONE OF THE FRUSTRATIONS WAS THAT'S
12:53PM 23 NOT ACTUALLY HOW IT WORKED. IN PRACTICE, MR. BALWANI WAS DOING
12:53PM 24 THE HIRING AND THE FIRING, EVEN INCLUDING THE LAB DIRECTOR WHEN
12:53PM 25 HE HIRES DR. DHAWAN.

12:53PM 1 I'M GOING TO SPEND A MOMENT TALKING TO YOU ABOUT ALL OF
12:53PM 2 THE THINGS THAT DR. DHAWAN AND ALSO LYNETTE SAWYER, WHAT THEY
12:54PM 3 DID NOT KNOW. THERE ARE SORT OF LARGE CATEGORIES OF
12:54PM 4 INFORMATION THAT BALWANI NEVER TOLD THEM WHEN THEY BEGAN
12:54PM 5 WORKING AT THERANOS.

12:54PM 6 AND THEN SEPARATELY, THE THINGS THAT THEY WERE NEVER ASKED
12:54PM 7 TO WEIGH IN ON. AND WE'LL LOOK AT SLIDES LIKE THIS BOTH FOR
12:54PM 8 DR. DHAWAN AND FOR SAWYER, BECAUSE IT SHOWS EVEN MORE HOW MUCH
12:54PM 9 ACTUAL IN PRACTICE POWER MR. BALWANI HAD IN THE LAB. SO THE
12:54PM 10 ATTEMPTS TO SUGGEST THAT THE BUCK STOPS WITH THE LAB DIRECTOR
12:54PM 11 ACCORDING TO THE REGULATIONS, REMEMBER YOU HAVE SEEN OR HEARD
12:54PM 12 TESTIMONY ABOUT THE CMS REGULATIONS, WELL, THAT IS NOT ACTUALLY
12:54PM 13 HOW IT WORKED.

12:54PM 14 AT THERANOS, THEY BRING IN MR. BALWANI'S DERMATOLOGIST,
12:54PM 15 AND THEN THEY DON'T TELL HIM A LIST OF INFORMATION. YOU MAY
12:54PM 16 RECALL THIS FROM HIS TESTIMONY, HE DIDN'T KNOW WHICH ANALYZERS
12:54PM 17 WERE BEING USED. HE DIDN'T KNOW WHAT A CTN WAS, THE CAPILLARY
12:54PM 18 TUBE AND NANOTAINER, THAT WAS USED TO COLLECT FINGERSTICK
12:55PM 19 BLOOD, AN INTEGRAL PART OF THERANOS'S TESTING SYSTEM. HE
12:55PM 20 DIDN'T EVEN KNOW WHAT THAT WAS.

12:55PM 21 HE DIDN'T KNOW HOW THESE VALIDATED ASSAYS WERE PERFORMING
12:55PM 22 IN THE LAB. HE DIDN'T KNOW ABOUT THE SHIPPING OF BLOOD. THE
12:55PM 23 LIST GOES ON. I WON'T READ IT TO YOU. YOU REMEMBER THIS
12:55PM 24 TESTIMONY.

12:55PM 25 BUT THERE WAS MUCH INFORMATION THAT WHEN MR. BALWANI GETS

12:55PM 1 RID OF ROSENDORFF AND HIRES A NEW LAB DIRECTOR, THAT THAT LAB
12:55PM 2 DIRECTOR IS THEN KEPT IN THE DARK ON, BECAUSE IT'S EASIER --
12:55PM 3 IT'S ACTUALLY NECESSARY TO RUN THE LAB FRAUD, THE PATIENT FRAUD
12:55PM 4 WITHOUT A LAB DIRECTOR WHO ASKS QUESTIONS.

12:55PM 5 IF YOU HAVE A LAB DIRECTOR WHO IS AGGRESSIVE, WHO
12:55PM 6 DISSENTS, WHO MAKES SUGGESTIONS ABOUT WHICH DEVICES THEY SHOULD
12:55PM 7 USE AND WHEN, IT'S MUCH MORE DIFFICULT TO RUN THE FRAUD. IT'S
12:55PM 8 MUCH EASIER IF YOU HAVE ONE LIKE DR. DHAWAN WHO HERE ALSO TOLD
12:55PM 9 YOU ALL OF THE THINGS THAT HE NEVER DID. HE NEVER TALKED TO
12:55PM 10 PATIENTS OR DOCTORS. HE NEVER TALKED ABOUT SPECIFIC TEST
12:55PM 11 RESULTS. HE NEVER TALKED ABOUT DECISIONS REGARDING CRITICAL
12:56PM 12 VALUES. HE NEVER WAS ASKED TO APPROVE THE CLINICAL LAB
12:56PM 13 ASSISTANTS OR INCLUDING MR. BALWANI. REMEMBER, I JUST SHOWED
12:56PM 14 YOU ON THE ORG CHART MR. BALWANI HAD A ROLE AS A CLA, AND THAT
12:56PM 15 WAS SOMETHING THAT DR. DHAWAN SAID HE WAS NEVER ASKED ABOUT.

12:56PM 16 SO ALL KINDS OF INFORMATION IN THE LAB WAS OCCURRING WHEN
12:56PM 17 DHAWAN WAS RUNNING IT THAT HE DID NOT HAVE INFORMATION ABOUT.

12:56PM 18 AND NOW WE CAN SEE THE SAME THING FOR SAWYER. YOU HEARD
12:56PM 19 THAT THEY WERE AT A TIME CO-LAB DIRECTORS. AND DR. SAWYER WAS
12:56PM 20 UNAWARE OF A SIMILAR LIST OF INFORMATION. SHE NEVER SAW AN
12:56PM 21 EDISON DEVICE. SHE NEVER VISITED THE LAB. SHE WAS UNSURE OF
12:56PM 22 THERANOS USING A DEVICE THAT IT MANUFACTURED, THE EDISON
12:56PM 23 DEVICE, IN ITS CLINICAL LAB. SO SHE WAS ALSO KEPT IN THE DARK
12:56PM 24 JUST LIKE DHAWAN.

12:56PM 25 AND YOU SEE A SIMILAR LIST OF THINGS THAT SHE WAS NOT

12:56PM 1 CONSULTED ON WHEN SHE WAS RUNNING THE LAB, REPORTING PATIENT
12:57PM 2 RESULTS, COMMUNICATING WITH DOCTORS OR PATIENTS, SIGNING OFF ON
12:57PM 3 OPERATING PROCEDURES RELATED TO THE EDISON DEVICE, SORT OF A
12:57PM 4 SIMILAR LIST OF INFORMATION THAT THE DIRECTORS WHO REPLACED
12:57PM 5 ROSENDORFF ARE NOW COMPLETELY KEPT IN THE DARK ABOUT.

12:57PM 6 MR. BALWANI YOU HEARD HAD DR. DHAWAN COME TO THERANOS ON A
12:57PM 7 SATURDAY. IT WAS SATURDAY, SEPTEMBER 19TH, 2015, JUST DAYS
12:57PM 8 BEFORE THE CMS SURVEY WHEN BENNETT CAME OUT TO THERANOS.

12:57PM 9 AND ON THAT SATURDAY, MR. BALWANI GAVE DHAWAN A STACK OF
12:57PM 10 DOCUMENTS TO SIGN, AND YOU SEE IN THE TEXT MESSAGES MR. BALWANI
12:57PM 11 SAYING, "OUR VALIDATION REPORTS ARE TERRIBLE. REALLY PAINFUL
12:57PM 12 GOING THRU THIS PROCESS. SAME ISSUES FDA POINTED OUT."

12:58PM 13 SO PREVIOUSLY YOU HEARD THE FDA CAME OUT AND LOOKED AT
12:58PM 14 THERANOS, AND WHAT MR. BALWANI HERE IS SAYING IS ON
12:58PM 15 SEPTEMBER 22ND, THE DATE OF THIS TEXT MESSAGE, WHICH IS ONE OF
12:58PM 16 THE DAYS OF THE CMS INSPECTION, HE'S GOING THROUGH THESE
12:58PM 17 TERRIBLE VALIDATION REPORTS AGAIN, HE'S GOING THROUGH THESE
12:58PM 18 TERRIBLE VALIDATION REPORTS. THE SAME VALIDATION REPORTS THAT
12:58PM 19 JUST DAYS EARLIER DHAWAN TOLD YOU HE ASKED ME TO SIGN BUT
12:58PM 20 DIDN'T TELL ME WERE TERRIBLE. HE HIRED, AND HE DIDN'T SAY
12:58PM 21 THIS, HE HIRED DHAWAN BECAUSE HE WASN'T ASKING THOSE KIND OF
12:58PM 22 QUESTIONS.

12:58PM 23 ADAM ROSENDORFF WAS THE KIND OF LAB DIRECTOR THAT MADE
12:58PM 24 THOSE KIND OF INQUIRIES, THAT ASKED HIM TO STOP USING THE
12:58PM 25 DEVICE, MADE STATEMENTS ABOUT THE ACCURACY AND RELIABILITY OF

12:58PM 1 THE TESTING. NOT DR. DHAWAN.

12:58PM 2 AND BOTH PANDORI AND ROSENDORFF TALKED TO YOU ABOUT THEIR
12:58PM 3 FRUSTRATIONS AS LAB DIRECTORS, SUCH THAT THEY DIDN'T HAVE
12:58PM 4 AUTHORITY TO MAKE DECISIONS, WHILE THEY WOULD HAVE EXPECTED TO
12:59PM 5 IN PRACTICE. THAT'S NOT HOW IT HAPPENED. IN FACT, THE PERSON
12:59PM 6 WHO DID HAVE DECISION AUTHORITY, WHO COULD MAKE THE DECISIONS
12:59PM 7 ABOUT HIRING AND FIRING, ABOUT WHICH DEVICES TO USE, IT ALL
12:59PM 8 FLOWED THROUGH SUNNY BALWANI.

12:59PM 9 YOU SEE HERE A SPECIFIC EXAMPLE. THIS IS ABOUT HCG. YOU
12:59PM 10 MAY REMEMBER THIS FROM THE TRIAL. AND IF YOU FOLLOW THROUGH IN
12:59PM 11 THE EMAILS, YOU CAN SEE ADAM ROSENDORFF'S FRUSTRATION, THE LAB
12:59PM 12 DIRECTOR'S FRUSTRATION WITH NOT BEING ABLE TO GET CLARITY, TO
12:59PM 13 NOT BEING ABLE TO STOP TESTING, HCG, ON AN EDISON DEVICE.

12:59PM 14 IN MAY OF 2014, THIS FIRST EMAIL DR. ROSENDORFF ATTEMPTS
12:59PM 15 TO HALT THE TESTING OF HCG ON THE THERANOS TECHNOLOGY AND
12:59PM 16 INSTEAD RUNS IT ON THE IMMULITE, A THIRD PARTY DEVICE.

12:59PM 17 AND THEN IN JUNE, THE EMAIL BELOW THAT -- AN EMAIL THAT
01:00PM 18 DR. ROSENDORFF IS NOT ON, YOU SEE DANIEL YOUNG SAYING, "BY THE
01:00PM 19 WAY, WE NEVER SWITCHED TO IMMULITE IN LIS. IT WAS NOT CLEAR TO
01:00PM 20 ME THIS DECISION WAS MADE."

01:00PM 21 FURTHER DOWN ON THAT SIDE OF THE SLIDE YOU SEE AN EMAIL
01:00PM 22 WITH DR. ROSENDORFF -- I'M SORRY, FROM DR. ROSENDORFF WHERE HE
01:00PM 23 SAYS, "CHANGE HCG TO VACUTAINER AND RUN ON IMMULITE."

01:00PM 24 AGAIN, A COUPLE OF DAYS AFTER HE SENT THAT ON THE 30TH
01:00PM 25 HE'S AGAIN SAYING HCG SHOULD NOT BE RUN ON THE THERANOS

01:00PM 1 TECHNOLOGY, IT SHOULD BE RUN ON THE IMMULITE, ON A THIRD PARTY
01:00PM 2 DEVICE, AND THEN HE FURTHER INSTRUCTS TO HOLD ANY OF THE
01:00PM 3 RESULTS THAT CAME FROM CTN'S, FROM THE THERANOS TECHNOLOGY.

01:00PM 4 AND THEN IF YOU GO TO THE RIGHT SIDE OF THE SLIDE, YOU SEE
01:00PM 5 AN EMAIL IN 2016 BOTH FROM AND TO BALWANI AND ROSENDORFF.

01:00PM 6 ROSENDORFF SAYS, SO HCG IS BACK ON VACUTAINER.

01:00PM 7 AND BALWANI SAYS -- THAT'S THE THIRD PARTY VEIN DRAWS --
01:01PM 8 BALWANI SAYS, NO, IT IS ON NANOTAINER IS PER CHINMAY'S EMAIL
01:01PM 9 BELOW.

01:01PM 10 AND THEN IN THIS TESTIMONY YOU SEE AND HEAR ROSENDORFF'S
01:01PM 11 FRUSTRATION, JUST THE IDEA THAT I'M THE LAB DIRECTOR AT
01:01PM 12 THERANOS, I'M TRYING TO STOP THEM FROM TESTING ON A PARTICULAR
01:01PM 13 DEVICE, AND I'M UNCLEAR WHETHER MY INSTRUCTIONS ARE BEING
01:01PM 14 FOLLOWED. I JUST DON'T HAVE THE AUTHORITY TO MAKE THOSE KINDS
01:01PM 15 OF DECISIONS BECAUSE I CAN'T GIVE AN INSTRUCTION AND HAVE
01:01PM 16 CONFIDENCE THAT IT'S GOING TO BE FOLLOWED.

01:01PM 17 YOU SEE HERE THAT LAB DIRECTORS, ACCORDING TO
01:01PM 18 DR. ROSENDORFF, DID NOT HAVE SPECIFIC AUTHORITY TO MAKE
01:01PM 19 DECISIONS LIKE DISCONTINUING THE TESTING ON THE EDISON DEVICE.
01:01PM 20 ROSENDORFF TESTIFIED TO YOU ABOUT THAT AND HOW LAB DIRECTORS
01:01PM 21 DID NOT HAVE THAT POWER.

01:01PM 22 ROSENDORFF TOLD YOU HOW HE WAS FRUSTRATED WITH HOW
01:01PM 23 THERANOS WAS CONDUCTING PROFICIENCY TESTING. REMEMBER, THIS IS
01:01PM 24 THE IDEA OF TESTING THE TESTS. THE LAB WOULD BE SENT SAMPLES
01:02PM 25 OF A KNOWN VALUE, AND THEN THERANOS WAS SUPPOSED TO RUN THOSE

01:02PM 1 SAMPLES AND SHARE THOSE RESULTS TO GET SCORED, TO TEST THEIR
01:02PM 2 TESTS.

01:02PM 3 AND DR. ROSENDORFF THOUGHT THAT THERANOS SHOULD BE DOING
01:02PM 4 ITS PROFICIENCY TESTING IN A CERTAIN WAY, AND THIS WAS ONE OF
01:02PM 5 THE REASONS THAT HE QUIT, HIS FRUSTRATIONS WITH THERANOS'S
01:02PM 6 INABILITY AND REFUSAL TO DO PROFICIENCY TESTING IN A WAY THAT
01:02PM 7 HE THOUGHT WAS NECESSARY.

01:02PM 8 AND THEN YOU ALSO SEE HERE WHERE DR. ROSENDORFF WAS
01:02PM 9 TELLING YOU ABOUT THERANOS REINSTITUTING OR USING THE EDISON
01:02PM 10 DEVICE FOR HCG TESTING AND HIS FRUSTRATION THAT HE JUST DIDN'T
01:02PM 11 HAVE THE POWER EVEN AS LAB DIRECTOR TO MAKE THE FINAL DECISION
01:02PM 12 WHICH TESTS WERE RUN ON WHICH DEVICES.

01:02PM 13 MS. BENNETT TOLD YOU THAT DURING THE CMS INSPECTION, HER
01:02PM 14 MAIN POINT OF CONTACT, THE ONE WHO WAS DOING THE PRESENTING,
01:02PM 15 WAS SUNNY BALWANI. AND SHE RAN INTO FRUSTRATIONS DURING THIS
01:02PM 16 INSPECTION.

01:03PM 17 SHE WOULD ASK FOR DOCUMENTS AND SOMETIMES IT WOULD TAKE A
01:03PM 18 LONG TIME TO GET THEM. SOMETIMES THE DOCUMENTS WOULDN'T BE THE
01:03PM 19 DOCUMENTS THAT SHE REQUESTED. SHE WAS ASKING TO INTERVIEW
01:03PM 20 CERTAIN EMPLOYEES, AND SHE FELT THAT THOSE REQUESTS WERE
01:03PM 21 IMPEDED.

01:03PM 22 SHE TOLD YOU THAT THERE WAS MORE ATTORNEY INVOLVEMENT IN
01:03PM 23 THIS SURVEY THAN SHE HAD PREVIOUSLY EXPERIENCED, AND SHE EVEN
01:03PM 24 TOLD YOU THAT HOLMES AND BALWANI TRIED TO INFLUENCE HER
01:03PM 25 FINDINGS WHEN AT THE END SHE WAS CONCERNED AND SHE EXPRESSED

THOSE CONCERNS THAT HOLMES AND BALWANI TRIED TO TALK HER OUT OF REACHING THOSE CONCLUSIONS.

SHE ALSO TOLD YOU SOMETHING ELSE THAT WAS INTERESTING. RECALL THAT SHE TOLD YOU AFTER THE SURVEY SHE CONTINUED TO COMMUNICATE WITH THERANOS, INCLUDING SOMEONE NAMED DR. DAS, D-A-S. AND WHEN SHE WAS COMMUNICATING WITH DR. DAS, SHE TOLD YOU THAT DR. DAS TOLD HER THAT THERANOS ITSELF HAD CONCLUDED THAT THERE WAS A POSSIBLE PATIENT IMPACT FOR EVERY ONE OF ITS TESTS ON THE 3.5 DEVICE.

AND THAT STATEMENT FROM DR. DAS TO MS. BENNETT WAS MADE WHILE SUNNY BALWANI STILL WORKED AT THERANOS. SO THERANOS ITSELF, AFTER THE 2015 CMS SURVEY, IS MAKING STATEMENTS ABOUT ITS VIEW OF ITS TESTING.

THERE'S LOTS OF EVIDENCE ABOUT THE INACCURACY OF THERANOS TESTING. WE'RE GOING TO GO THROUGH SOME OF THAT.

IT BEGINS, THOUGH, WITH THE QUALITY CONTROL FAILURES THAT THEY WERE SEEING EVEN ON MODIFIED THIRD PARTY DEVICES. THEY WERE HAVING TROUBLE TESTING ACCURATELY ON THE EDISON DEVICE, THE THERANOS DEVICE.

BUT YOU ALSO HEARD THAT THEY WERE TESTING PATIENT'S BLOOD ON THIRD PARTY DEVICES THAT THERANOS HAD MODIFIED AND IN THIS EMAIL AND QUESTION AND ANSWER WITH DR. PANDORI, YOU SEE DR. PANDORI EXPRESSING SOME CONCERNS ABOUT THE EFFECT THAT CERTAIN PROTOCOLS THAT THEY'RE RUNNING ON THE MODIFIED DEVICES ARE HAVING ON QUALITY CONTROL, THAT EVEN THESE MODIFIED DEVICES

01:05PM 1 WERE CREATING PROBLEMS IN THE LAB AND PANDORI WAS TALKING TO
01:05PM 2 YOU ABOUT HOW THOSE PROBLEMS WERE UNIQUE.

01:05PM 3 THE 3.5'S ALSO, NOT JUST THE MODIFIED DEVICES, THE 3.5'S
01:05PM 4 WERE ALSO FAILING QUALITY CONTROL.

01:05PM 5 REMEMBER THIS CHART THAT YOU SAW THAT LISTED QUALITY
01:05PM 6 CONTROL FAILURES FOR A PARTICULAR MONTH, THIS MONTH OF MARCH IN
01:05PM 7 2014.

01:05PM 8 BUT PANDORI AND ROSENDORFF TOLD YOU THAT THESE FAILURES
01:05PM 9 WERE NOT UNIQUE, THEY WERE TYPICAL. IF YOU LOOK AT THE TEXT OF
01:05PM 10 THE QUESTION AND ANSWER, THEY BOTH SAY THAT MARCH WAS NOT A
01:05PM 11 UNIQUE MONTH, THAT THESE FAILURES WERE TYPICAL. AND YOU ALSO
01:05PM 12 HEARD THE IMPLICATIONS OF QUALITY CONTROL FAILURES, WHAT IT
01:05PM 13 MEANS TO HAVE QUALITY CONTROL FAILURES WHEN LYNETTE SAWYER AND
01:05PM 14 OTHER WITNESSES TOLD YOU HOW IT'S IMPORTANT TO MONITOR HOW YOUR
01:06PM 15 TESTS ARE DOING ON A DAILY BASIS, EVEN IN THE CLIA LAB THROUGH
01:06PM 16 THE QUALITY CONTROL PROCESS BECAUSE THAT CAN SEND YOU SIGNALS
01:06PM 17 ABOUT THE ABILITY OR LACK OF ABILITY OF THE TESTING TO GENERATE
01:06PM 18 ACCURATE RESULTS.

01:06PM 19 THERE'S A SPECIFIC INSTANCE THAT DR. PANDORI TOLD YOU
01:06PM 20 ABOUT WHEN THERANOS HAD RECEIVED SOME PROFICIENCY TESTING
01:06PM 21 SAMPLES, AND IT TOOK THESE SAMPLES AND TESTED THEM ON DIFFERENT
01:06PM 22 DEVICES. IT TOOK THE SAMPLES AND TESTED THEM ON THERANOS
01:06PM 23 DEVICES, AND ON PREDICATE DEVICES, AND IT EVEN RERAN THE
01:06PM 24 SAMPLES. SO TWICE ON THE PREDICATE, TWICE ON THE THERANOS.

01:06PM 25 WHAT I HAVE CIRCLED HERE IN GREEN FOR YOU ARE THE RESULTS

01:06PM 1 FOR THE PSA, FOR THE PROSTATE TEST, WHERE YOU CAN SEE THAT WHEN
01:06PM 2 THEY RUN THESE SAMPLES TWICE ON THE PREDICATE DEVICES, NOTICE
01:06PM 3 THEY'RE GETTING THE SAME SCORE, SO THEY'RE GETTING A 3.1 AND
01:06PM 4 THEN A 3.1 WHEN THEY RERUN IT. THEY'RE GETTING A 7.5 AND THEN
01:07PM 5 A 7.5 WHEN THEY RERUN THE PSA ON THE PREDICATE DEVICES, THE
01:07PM 6 THIRD PARTY TESTING DEVICES.

01:07PM 7 BUT WHEN THEY USE THE THERANOS DEVICES AND RERUN THESE
01:07PM 8 TESTS, THEY'RE GETTING WILDLY DIFFERENT RESULTS EACH TIME.
01:07PM 9 THEY'RE GETTING A 1.9 AND THEN A 2.6.

01:07PM 10 AND THEN WHEN THEY RUN THE SECOND ONE, A 4.9 AND A 7.2.

01:07PM 11 AND DR. PANDORI TOLD YOU THAT THIS KIND OF ACTIVITY, THIS
01:07PM 12 KIND OF STUDY WAS CONCERNING TO HIM. IT IS SUGGESTIVE OF
01:07PM 13 FURTHER PROBLEMS, AND IT'S JUST ONE OF THE MANY PIECES OF
01:07PM 14 EVIDENCE THAT YOU'VE SEEN THAT CALL INTO QUESTION THE ACCURACY
01:07PM 15 OF THERANOS'S TESTING.

01:07PM 16 THERE'S A DOCUMENT THAT YOU SAW CALLED THE MASTER VALUE
01:07PM 17 LITIGATION PLAN FOR ELISA ASSAYS ON THE THERANOS DEVICES.

01:07PM 18 SO WHEN THERANOS WANTS TO PUT THESE ASSAYS THROUGH THE
01:07PM 19 RESEARCH AND DEVELOPMENT STAGE AND THEN VALIDATE THEM SO THEY
01:07PM 20 CAN MOVE THEM FROM THE R&D LAB INTO THE CLIA LAB TO RUN ON
01:08PM 21 PATIENTS, LOOK AT THE LANGUAGE THAT THEY USE IN THEIR OWN
01:08PM 22 DOCUMENT TO HELP MAKE THESE VALIDATION DETERMINATIONS. "THE
01:08PM 23 SYSTEM ENABLES RESULTS IN UNDER AN HOUR WITH PRECISION AND
01:08PM 24 ACCURACY EQUIVALENT TO TRADITIONAL CLINICAL LABORATORY
01:08PM 25 ANALYZERS."

1 AND WHAT I'M FOCUSING YOU ON IS THAT WORD "EQUIVALENT."

2 WHEN THEY'RE TALKING TO THIRD PARTIES, TO PATIENTS, TO

3 INVESTORS, THERANOS IS NEVER BRAGGING ABOUT ITS ABILITY TO RUN

4 TESTING THAT IS EQUIVALENT TO THE TECHNOLOGY THAT EXISTS IN THE

5 MARKET. THEY'RE USING WORDS LIKE "HIGHEST LEVELS OF ACCURACY,"

6 THEY'RE TALKING ABOUT HOW THEIR TECHNOLOGY IS EVEN BETTER THAN

7 WHAT IS ALREADY IN THE MARKET.

8 BUT WHEN THERANOS ITSELF IS TALKING ABOUT HOW TO VALIDATE

9 ITS TESTING TECHNOLOGY, IT, IN THE INTERNAL DOCUMENTS,

10 ACKNOWLEDGES THAT HIGHER IS TOO HIGH A BAR FOR THERANOS AND

11 SETS THE BAR LOWER TO LOOK FOR EQUIVALENCY.

12 BUT EVEN THAT, YOU HEARD SOME USEFUL TESTIMONY FROM

13 DR. ROSENDORFF. DR. ROSENDORFF, WHEN THIS SENTENCE WAS PICKED

14 OUT AND ASKED HIS THOUGHTS AFTER WORKING WITH THESE DEVICES AND

15 THESE SYSTEMS FOR MORE THAN A YEAR WAS THAT YOUR EXPERIENCE

16 WITH THEM, AND DR. ROSENDORFF IN STRONG LANGUAGE SAYS, THIS IS

17 A LIE, THAT IT WAS EVEN EQUIVALENT TO EXISTING TECHNOLOGY.

18 AND THEN THE CONVERSATION GOES ON. DR. ROSENDORFF WAS

19 ASKED ABOUT THE SIEMENS ADVIA 1800 AND HOW THE 1800 PART OF

20 THAT MEANT THAT IT COULD RUN 1800 TESTS IN ONE HOUR.

21 AND DR. ROSENDORFF WAS ASKED HOW DOES THAT COMPARE TO THE

22 THERANOS DEVICE? AND YOU MAY REMEMBER WHAT HE SAID ABOUT THE

23 THERANOS DEVICE COULD DO WAS RUN ONE IF YOU WERE LUCKY.

24 I WANT TO GO THROUGH SOME SPECIFIC TIMELINES FOR CERTAIN

25 ASSAYS TO SHOW YOU THERANOS WAS TESTING CERTAIN ASSAYS EVEN

01:09PM 1 AFTER RECEIVING KNOWLEDGE THAT THAT PARTICULAR ASSAY WAS
01:10PM 2 INACCURATE, WAS TROUBLESOME FOR THERANOS.

01:10PM 3 LET'S START WITH HCG.

01:10PM 4 THE THERANOS VALIDATION REPORT FOR HCG ON THE EDISON WAS
01:10PM 5 SIGNED IN MARCH OF 2014. HERE'S THAT DOCUMENT, THE VALIDATION
01:10PM 6 REPORT.

01:10PM 7 AND NOTICE I MENTIONED THIS TO YOU EARLIER. AT THE VERY
01:10PM 8 BOTTOM YOU SEE DR. DHAWAN'S SIGNATURE. DR. DHAWAN SIGNED THIS
01:10PM 9 ON 9/19/15, SEPTEMBER 19TH, 2015. THAT'S THE SATURDAY. THAT'S
01:10PM 10 THE DAY THAT DR. DHAWAN WAS INVITED INTO THERANOS BY
01:10PM 11 MR. BALWANI TO SIGN A STACK OF DOCUMENTS. SO THIS IS ONE OF
01:10PM 12 THOSE DOCUMENTS THAT DR. DHAWAN SIGNED THAT ONE SATURDAY JUST A
01:10PM 13 COUPLE OF DAYS IN ADVANCE OF THE CMS SURVEY.

01:10PM 14 SO THE THERANOS HCG ASSAY IS VALIDATED TO MOVE FROM THE
01:10PM 15 R&D LAB INTO THE CLIA LAB IN MARCH OF 2014.

01:10PM 16 IN MAY, IT BEGINS TESTING ON THE EDISON. AND YOU KNOW
01:11PM 17 FROM THIS DOCUMENT IT SHOWS YOU THE 12 ASSAYS. THERANOS IS
01:11PM 18 TESTING ON THE EDISON AND THE START AND END DATE FOR IT. SO
01:11PM 19 THERANOS STARTED BEGIN TESTING ON HCG IN MAY OF 2014.

01:11PM 20 LATER IN MAY, A FEW WEEKS LATER, DR. ROSENDORFF HALTS THE
01:11PM 21 HCG TESTING ON THE EDISON DEVICE, AND I JUST SHOWED YOU THIS
01:11PM 22 EMAIL A FEW SLIDES BACK, OR IT HALTS TESTING ON THE HCG EDISON
01:11PM 23 DEVICE.

01:11PM 24 THEN ELIZABETH HOLMES RECEIVES EMAIL COMPLAINTS FROM
01:11PM 25 CUSTOMERS ABOUT HCG. HERE'S ONE WHERE HER BROTHER IS TELLING

01:11PM 1 MS. HOLMES THAT HCG IS CAUSING THEM A LOT OF ISSUES RIGHT NOW
01:11PM 2 AND PATIENT COMPLAINTS.

01:11PM 3 MR. BALWANI ALSO RECEIVES EMAILS ABOUT THE EDISON FAILING
01:11PM 4 QUALITY CONTROLS. THIS ONE IN JUNE GOES TO MR. BALWANI, AND
01:11PM 5 IT'S TALKING ABOUT QC FAILURES ON EDISON DEVICES, AND IT LISTS
01:12PM 6 ASSAYS, AND YOU SEE HCG IS ONE OF THE ASSAYS THAT IS LISTED
01:12PM 7 THERE.

01:12PM 8 THEN THERE'S EMAILS WITH ADDITIONAL CUSTOMER COMPLAINTS
01:12PM 9 THAT GO TO BOTH HOLMES AND BALWANI. WE'RE NOW IN SEPTEMBER
01:12PM 10 WHERE HOLMES AND BALWANI ARE REVIEWING SPECIFIC EMAILS ABOUT
01:12PM 11 CUSTOMER COMPLAINTS REGARDING HCG. AFTER ALL OF THAT,
01:12PM 12 BRITTANY GOULD GOES IN AND GETS HER HCG TEST. THAT'S IN
01:12PM 13 OCTOBER OF 2014. YOU HEARD HER TESTIMONY.

01:12PM 14 SO AFTER ROSENDORFF TRIES TO HALT IT, AFTER THEY GET
01:12PM 15 WARNED IN EMAILS, AFTER IT'S CAUSING THEM A LOT OF PAIN, THEN
01:12PM 16 BRITTANY GOULD GOES IN AND GETS HER HCG TEST.

01:12PM 17 AND AFTER ALL OF THAT THEY CEASE, THEY STOP TESTING HCG ON
01:12PM 18 THE EDISON. YOU KNOW THAT FROM THIS SAME DOCUMENT THAT WAS
01:12PM 19 SHARED WITH CMS.

01:12PM 20 AND FINALLY, DR. ZACHMAN TOLD YOU AT LEAST AS TO
01:12PM 21 BRITTANY GOULD'S HCG TEST, DR. ZACHMAN DOES NOT THINK THAT THEY
01:12PM 22 WERE ACCURATE. THEY SUGGESTS THAT THERE WAS A PROBLEM WITH THE
01:13PM 23 PREGNANCY, BUT, YOU KNOW, BRITTANY GOULD SUCCESSFULLY CARRIED
01:13PM 24 THE PREGNANCY TO TERM.

01:13PM 25 LET'S DO THE SAME THING FOR PSA. FOR THE PSA TEST, IT WAS

01:13PM 1 VALIDATED ON THE EDISON DEVICE IN SEPTEMBER OF 2013. AND
01:13PM 2 HERE'S THE DOCUMENT LIKE THIS THAT I SHOWED YOU FOR HCG. HERE
01:13PM 3 IS THE VALIDATION DOCUMENT FOR PSA.

01:13PM 4 NOTICE AGAIN DHAWAN'S SIGNATURE ON SEPTEMBER 19TH, THE DAY
01:13PM 5 THAT HE WAS INVITED TO SIGN A BUNCH OF DOCUMENTS, AND THIS IS
01:13PM 6 ONE OF THOSE DOCUMENTS THAT HE SIGNS.

01:13PM 7 THE INTERNAL RESULTS COMPARISON, THE GREEN CIRCLE THAT WE
01:13PM 8 TALKED ABOUT A MOMENT AGO, SENDS WARNING SIGNS THAT THE
01:13PM 9 THERANOS DEVICE, UNLIKE THE PREDICATE DEVICE, IS NOT GENERATING
01:13PM 10 THIS REPEATABLE PSA TEST RESULT WHEN IT'S THE SAME SAMPLE, IT'S
01:13PM 11 NOT GENERATING THE SAME RESULT WHEN YOU RUN THAT TEST A SECOND
01:13PM 12 TIME. THAT WAS IN FEBRUARY.

01:13PM 13 AND NOW IN MAY AND JUNE DR. ELLSWORTH GETS HIS PSA TEST.
01:14PM 14 SO AFTER THEY SEE THE WARNING SIGNS ABOUT PSA, IT'S AFTER THAT
01:14PM 15 THAT DR. ELLSWORTH GETS HIS PSA TESTS. AND HERE'S THE FIRST
01:14PM 16 AND THIRD ELLSWORTH PSA TEST. YOU KNOW THEY WERE RUN ON THE
01:14PM 17 EDISON BECAUSE YOU'VE SEEN THE INTERNAL EMAILS THAT IDENTIFY
01:14PM 18 WHICH DEVICE HIS SPECIFIC TESTS WERE RUN ON WHEN THERANOS IS
01:14PM 19 TRYING TO IDENTIFY THE PROBLEM.

01:14PM 20 AFTER THAT, THERANOS CEASES TESTING OF PSA ON THE EDISON.
01:14PM 21 YOU KNOW FROM THIS SAME CMS DOCUMENT THAT THERANOS ENDED ITS
01:14PM 22 PSA TESTING ON THE EDISON IN JUNE OF 2015.

01:14PM 23 AND AFTER THAT, DR. ELLSWORTH RECEIVED HIS VEIN DRAW TEST,
01:14PM 24 THE ONE THAT WAS DRAWN IN HIS DENTIST OFFICE. AND THAT'S THIS
01:14PM 25 DOCUMENT THAT GAVE HIM THE SCORE THAT DR. BURNES WAS

01:14PM 1 COMFORTABLE AFTER THERANOS HAD HALTED TESTING OF PSA ON THE
01:14PM 2 EDISON DEVICE.

01:15PM 3 ALL OF THIS, ALL OF THE BLOOD TESTING THAT THERANOS WAS
01:15PM 4 DOING FOR PATIENTS WAS WHILE HOLMES AND BALWANI WERE TEXTING
01:15PM 5 ABOUT SOMETHING DIFFERENT, ABOUT KNOWLEDGE THAT THERE WERE
01:15PM 6 PROBLEMS IN THE LAB, THAT THE NORMANDY LAB WAS A DISASTER, THAT
01:15PM 7 THEY NEED TO STOP FIGHTING FIRES BY NOT CREATING THEM IN THE
01:15PM 8 LAB, BY NEEDING NEW LAB DIRECTORS AND MANAGERS, BY IDENTIFYING
01:15PM 9 THE ROOT CAUSES OF THEIR PROBLEMS.

01:15PM 10 IN THEIR TEXT MESSAGES, THEY'RE TALKING ABOUT THE PROBLEMS
01:15PM 11 WITH BLOOD TESTING WHILE AT THE SAME TIME THEY'RE ALLOWING THE
01:15PM 12 BRITTANY GOULDS, THE DR. ELLSWORTHS, THE OTHER PATIENTS THAT
01:15PM 13 YOU HAVE HEARD FROM COME IN AND GET BLOOD TESTS AT THERANOS.

01:15PM 14 THEY ARE ALSO, AND IN THIS INSTANCE YOU SEE MR. BALWANI,
01:15PM 15 HE'S RECEIVING CUSTOMER COMPLAINT LOGS. WHEN CUSTOMERS ARE
01:15PM 16 CALLING THERANOS TO COMPLAIN ABOUT ISSUES WITH TESTING, THEY
01:15PM 17 GET PUT INTO A DOCUMENT, AND YOU'VE SEEN THESE DOCUMENTS AND
01:16PM 18 EMAILS TO MR. BALWANI. SO HE'S SEEING IN REAL TIME PROBLEMS
01:16PM 19 WITH PSA TESTING OR HCG TESTING, OTHER PROBLEMS.

01:16PM 20 BUT HE'S NOT JUST SEEING IT IN THE TEXT MESSAGES, HE'S NOT
01:16PM 21 JUST SEEING IT IN CUSTOMER COMPLAINT LOGS, HIS OWN EMPLOYEES
01:16PM 22 ARE GOING TO HIM LIKE ERIKA CHEUNG AND DR. PANDORI, AND THEY'RE
01:16PM 23 BOTH DIRECTLY CONFRONTING SUNNY BALWANI AND SAYING THAT THEY
01:16PM 24 HAVE CONCERNS ABOUT THE ACCURACY OF THERANOS'S BLOOD TESTING
01:16PM 25 TECHNOLOGY.

01:16PM 1 AND YOU SEE HERE ERIKA CHEUNG SAYING SHE DISCUSSED THESE
01:16PM 2 POOR QUALITY CONTROL RESULTS WITH MR. BALWANI, AND DR. PANDORI
01:16PM 3 IS SAYING THAT HE ALSO COMMUNICATED DIRECTLY WITH MR. BALWANI
01:16PM 4 ABOUT IN THIS INSTANCE STOPPING TO USE THE EDISON DEVICE.

01:16PM 5 MR. BALWANI TOLD HIM THAT WOULD NEVER HAPPEN.

01:16PM 6 THOSE WERE THE ONLY EMPLOYEES, THOUGH, THAT WARNED ABOUT
01:17PM 7 PROBLEMS IN THE LAB. THIS EMPLOYEE YOUR HEARD SOME TESTIMONY
01:17PM 8 ABOUT TYLER SHULTZ ALSO SENT AN EMAIL, AND YOU SAW THAT EMAIL
01:17PM 9 GET FORWARDED TO SUNNY BALWANI. SO IT ISN'T JUST THE WITNESSES
01:17PM 10 THAT YOU HAVE HEARD FROM. YOU'VE SEEN OTHER EMAILS WHERE
01:17PM 11 MR. BALWANI IS TOLD THAT OTHER EMPLOYEES ALSO HAVE CONCERNS
01:17PM 12 ABOUT THERANOS'S BLOOD TESTING.

01:17PM 13 EVEN BEFORE THE LAUNCH, EVEN BEFORE SEPTEMBER OF 2013 WHEN
01:17PM 14 THERANOS BEGAN OFFERING TESTING IN WALGREENS STORES,
01:17PM 15 DR. ROSENDORFF WROTE AN EMAIL CALLED CONCERNS ABOUT THE LAUNCH.
01:17PM 16 DR. ROSENDORFF IN THE EMAIL IDENTIFIED SPECIFIC ASSAYS THAT HE
01:17PM 17 WAS WORRIED ABOUT.

01:17PM 18 SO EVEN BEFORE THEY LAUNCHED WITH WALGREENS, EVEN BEFORE
01:17PM 19 THEY BEGAN TESTING A PATIENT'S BLOOD, MR. BALWANI IS SENT THIS
01:17PM 20 EMAIL THAT DR. ROSENDORFF WROTE WARNING ABOUT PROBLEMS WITH THE
01:17PM 21 LAUNCH. WHAT HAPPENED WITH PATIENTS WASN'T A SURPRISE. IT WAS
01:17PM 22 EXPECTED.

01:17PM 23 THERE WERE -- THE WAY THERANOS SOLVED THE PROBLEMS WAS TO
01:18PM 24 CONDUCT THESE AFTER-THE-STUDY, AFTER-THE-FACT STUDIES. SO
01:18PM 25 THERANOS WOULD TRY TO FIGURE OUT WHAT SOME OF ITS PROBLEMS

WERE.

AND WHAT DR. ROSENDORFF TOLD YOU WAS THE FIRST TIME OR TWO THAT THAT HAPPENED, I ACTUALLY WAS SATISFIED. I THOUGHT WE HAD A PROBLEM, AND THEN WE DID SOME KIND OF ROOT CAUSE ANALYSIS TO FIGURE OUT WHAT THAT PROBLEM WAS, AND THEN THAT STUDY MADE ME COMFORTABLE, AND MY COMFORT LEVEL QUICKLY EVAPORATED BECAUSE THERE WASN'T EVER A PERMANENT FIX. BECAUSE WE WOULD HAVE A STUDY, AND WE WOULD COME UP WITH SOME SOLUTION, YOU WOULD PUT THAT SOLUTION IN PLACE, AND THEN YOU WOULD HAVE MORE PROBLEMS POP UP.

AND WHAT MR. BALWANI WRITES IN THIS EMAIL IS INSIGHTFUL. HE ISN'T SURPRISED BY THE FACT THAT THEY'RE HAVING TO DO THESE STUDIES. WHAT HE'S ACKNOWLEDGING IS THAT THERE ARE ALL OF THESE STUDIES ALWAYS AFTER THE FACT. THAT WE AREN'T EVER ABLE TO SORT OF GET AHEAD OF THE PROBLEM, TO GET THE TECHNOLOGY TO A PLACE WHERE IT WILL JUST RELIABLY AND ACCURATELY TEST PATIENT BLOOD.

WHAT THERANOS WAS LEFT DOING, AND WHAT MR. BALWANI KNEW THAT THEY WERE LEFT TO DO WAS TO TEST PATIENT BLOOD, CREATE PROBLEMS, AND THEN SCRAMBLE, AND THEN COME UP WITH A WAY TO TRY TO JUSTIFY THOSE RESULTS OR FIX THE PROBLEMS AFTER THE PATIENTS GET THESE INACCURATE TEST RESULTS.

MR. BALWANI WAS ALSO INFORMED OF THE NUMEROUS TIMES THAT THERANOS'S TECHNOLOGY, ITS EDISONS, WERE FAILING QUALITY CONTROL AND HOW THAT WAS A SIGNIFICANT PROBLEM AT THERANOS

01:19PM 1 BECAUSE OF WHAT QUALITY CONTROL TOLD YOU ABOUT THE VALUE OF THE
01:19PM 2 UTILITY OF THE THERANOS DEVICES.

01:19PM 3 AND YOU'VE SEEN EMAIL AFTER EMAIL WHERE MR. BALWANI IS
01:19PM 4 INFORMED OF THESE QUALITY CONTROL FAILURES.

01:19PM 5 YOU SAW THIS SPECIFIC EMAIL WHICH IS ABOUT ANOTHER HCG
01:19PM 6 PROBLEM WHERE HOLMES AND BALWANI ARE TOLD, AND I'M STARTING AT
01:19PM 7 THE LARGER BLOWUP AT THE BOTTOM FROM A PHYSICIAN. "WE WILL
01:20PM 8 CALL THE SUPPORT LINE BUT ALSO WANTED TO GIVE YOU A HEADS UP ON
01:20PM 9 WHAT HAPPENED WITH THE LAB. WE SENT A PATIENT OF OURS IN FOR
01:20PM 10 HER 48-HOUR REPEAT ON HER HCG. HER INITIAL TEST CAME BACK AT
01:20PM 11 160 (RUN AT A DIFFERENT LAB), AND WHEN WE SENT HER BACK IN FOR
01:20PM 12 HER REPEAT WITH YOUR LAB, THE RESULTS CAME BACK AT BELOW 7.
01:20PM 13 BECAUSE HER TEST CAME BACK NEGATIVE, WE HAD HER DISCONTINUE HER
01:20PM 14 CURRENT MEDICATIONS AND BEGAN GETTING HER READY FOR HER NEXT
01:20PM 15 CYCLE.

01:20PM 16 "A FEW WEEKS LATER SHE WENT BACK IN FOR ANOTHER HCG AND IT
01:20PM 17 CAME BACK AT OVER 2,000. WE BROUGHT HER IN AND I SCANNED HER,
01:20PM 18 AND THERE WAS IN FACT A BABY AND A HEARTBEAT.

01:20PM 19 "OUR CONCERN IS YOUR LAB TOLD US SHE HAD A NEGATIVE
01:20PM 20 PREGNANCY. WE RELAYED THAT TO OUR PATIENT AND CONTINUED OUR
01:20PM 21 PROTOCOL AS SHE WASN'T PREGNANT."

01:20PM 22 AND THEN LOOK AT WHAT HOLMES AND BALWANI ARE LEFT TO SAY
01:20PM 23 TO EACH OTHER. MS. HOLMES WRITES, "HOW DID THAT HAPPEN."

01:21PM 24 AND MR. BALWANI WRITES "FINDING OUT."

01:21PM 25 THEY KNEW THAT THERE WERE PROBLEMS WITH HCG, AND THEY KNEW

01:21PM 1 THERE WERE PROBLEMS WITH ALL OF THEIR TESTS EVEN BEFORE
01:21PM 2 LAUNCHING. THEY STILL WENT FORWARD AND LAUNCHED. AND ALL THEY
01:21PM 3 ARE LEFT TO DO WHEN THEY GET INFORMED OF THESE PROBLEMS IS
01:21PM 4 AFTER THE FACT COME UP WITH A JUSTIFICATION OR EXCUSES FOR
01:21PM 5 THOSE TESTS.

01:21PM 6 THERE ARE ADDITIONAL HCG EMAILS. YOU'VE SEEN THESE
01:21PM 7 EXAMPLES, EXHIBIT 4840, 4836, AND 4145, ALL TALKING ABOUT
01:21PM 8 PROBLEMS WITH THE HCG TESTING AT THERANOS AND HOW HOLMES AND
01:21PM 9 BALWANI ARE SPENDING THEIR TIME TRYING TO FIGURE OUT WHAT THESE
01:21PM 10 RELATE TO, WHAT CAUSED THE PROBLEM AND HOW THEY CAN JUSTIFY
01:21PM 11 CONTINUING TO TEST.

01:21PM 12 HCG IS NOT THE ONLY ASSAY THAT YOU'VE HEARD ABOUT. YOU'VE
01:21PM 13 SEEN EMAILS RELATED TO PT INR WHERE THEY'RE IDENTIFYING PATIENT
01:22PM 14 PROBLEMS RELATING TO PT INR, BUT HCG AND PT INR WEREN'T THE
01:22PM 15 ONLY ONES.

01:22PM 16 YOU'VE SEEN HDL EMAILS WHERE ROSENDORFF IS WARNING
01:22PM 17 MR. BALWANI THAT THEY SHOULD DISCONTINUE HDL TESTING. AND LOOK
01:22PM 18 HOW HE PHRASES THE EMAIL, "I WOULD LIKE TO DISCONTINUE HCG
01:22PM 19 TESTING."

01:22PM 20 BUT WHAT ROSENDORFF TOLD YOU WAS, IF I WAS THE TRUE LAB
01:22PM 21 DIRECTOR, I WOULDN'T HAVE TO DO IT IN THIS WAY. I WOULDN'T
01:22PM 22 HAVE TO ASK PERMISSION OR INFORM THE PERSON WHO REALLY OVERSEES
01:22PM 23 THE LAB, I COULD JUST MAKE THESE DECISIONS.

01:22PM 24 BUT LOOK AT WHAT MR. BALWANI RESPONDS, "WE CANNOT REVERT
01:22PM 25 BACK TO VENIPUNCTURE FOR HDL." SO EVEN WHEN CONFRONTED WITH

01:22PM 1 PROBLEMS ON SPECIFIC ASSAYS AND ROSENDORFF IS ABIDING BY THE
01:22PM 2 STRUCTURE AT THERANOS WHERE THE LAB DIRECTOR DOESN'T HAVE THE
01:22PM 3 POWER TO MAKE THOSE DECISIONS, SO HE GOES TO BALWANI ABOUT IT
01:22PM 4 AND HE'S TOLD NO.

01:22PM 5 THERE'S ANOTHER ASSAY BICARB THAT HAS ISSUES THAT
01:22PM 6 DR. ROSENDORFF TOLD YOU THAT I THOUGHT WAS UNIQUE, WAS A
01:23PM 7 SPECIFIC PROBLEM TO THERANOS DEVICES, THE WAY THERANOS TESTED
01:23PM 8 THIS PARTICULAR ASSAY HE THOUGHT WAS CAUSING PROBLEMS. AND
01:23PM 9 NOTICE IN THE EMAIL, THE ONE ON THE LEFT BOTTOM, 4189,
01:23PM 10 DR. ROSENDORFF TELLS MR. BALWANI THAT HE IS THINKING THAT SINCE
01:23PM 11 WE VOID ALL ABNORMAL BICARBONATE RESULTS, THE TEST HAS LOST ANY
01:23PM 12 DIAGNOSTIC VALUE AND PROBABLY ALSO RELIABILITY WHEN RESULTS ARE
01:23PM 13 REPORTED IN THE NORM RANGE.

01:23PM 14 AND THEN ABOVE THAT DR. ROSENDORFF FOLLOWS UP WITH FURTHER
01:23PM 15 CONCERNS ABOUT THIS ASSAY. SO THE NUMBER OF ASSAYS IS JUST
01:23PM 16 GROWING. THE NUMBER OF ASSAYS WITH PROBLEMS AND EMAILS
01:23PM 17 DIRECTLY TO MR. BALWANI IS ANOTHER GROUP OF ASSAYS CALLED ISE
01:23PM 18 ASSAYS.

01:23PM 19 AGAIN, MR. BALWANI IS ON THESE EMAILS WHERE THEY'RE
01:23PM 20 IDENTIFYING PROBLEMS WITH THIS SET OF ASSAYS, WITH ISE ASSAYS.

01:23PM 21 AND THIS EMAILS CONTAINS JUST A BUNCH OF DIFFERENT ASSAYS.
01:24PM 22 THIS ONE TALKS ABOUT VITAMIN B12, HCG, TESTOSTERONE, C02,
01:24PM 23 OTHERS.

01:24PM 24 SO SOMETIMES THERE ARE ASSAYS BEING DESCRIBED TO
01:24PM 25 MR. BALWANI AS PROBLEMATIC BY THEMSELVES IN AN EMAIL, AND

01:24PM 1 SOMETIMES THEY WRITE SEVERAL ASSAYS IN ONE EMAIL AND WARN
01:24PM 2 MR. BALWANI ABOUT THESE PROBLEMS.

01:24PM 3 THE SECOND ELEMENT FOR THE PATIENT COUNTS IS THIS SAME
01:24PM 4 CONCEPT OF MATERIALITY, THAT IS, THE FALSE STATEMENTS THAT THE
01:24PM 5 PATIENT HEARD NEEDED TO MATTER, NEEDED TO BE THE KIND OF FALSE
01:24PM 6 STATEMENTS THAT WOULD CAUSE A PATIENT TO SPEND MONEY ON THE
01:24PM 7 BLOOD TESTING, AND HERE EACH OF THE PATIENTS TOLD YOU BOTH THE
01:24PM 8 SOURCE WHERE THEY GOT STATEMENTS ABOUT THERANOS AND THEN WHAT
01:24PM 9 THOSE STATEMENTS WERE.

01:24PM 10 SO BRITTANY GOULD TOLD YOU SHE SAW PATIENT BROCHURES; AND
01:24PM 11 MR. BINGHAM TOLD YOU HE SAW STATEMENTS ON THE THERANOS WEBSITE;
01:24PM 12 MAGAZINE ARTICLES WERE REVIEWED BOTH BY TOMPKINS AND BINGHAM;
01:25PM 13 AND THEN TOMPKINS ALSO TOLD YOU SHE THOUGHT SHE REMEMBERS
01:25PM 14 SEEING OR HEARING A COMMERCIAL FOR THERANOS.

01:25PM 15 AND THE SPECIFIC REPRESENTATIONS THAT MATTERED TO THE
01:25PM 16 PATIENT, AS IT'S PROBABLY NOT A SURPRISE, ARE THE ONES THAT
01:25PM 17 RELATE TO ACCURACY.

01:25PM 18 SO BRITTANY GOULD TALKED ABOUT HOW SHE SAW AND EXPECTED --
01:25PM 19 SHE SAW STATEMENTS ABOUT ACCURACY, AND SHE EXPECTED HER BLOOD
01:25PM 20 TESTS TO BE ACCURATE.

01:25PM 21 SAME WITH DR. ELLSWORTH. HE SAW STATEMENTS ABOUT ACCURACY
01:25PM 22 AND EXPECTED HIS BLOOD TESTS TO GENERATE ACCURATE RESULTS.

01:25PM 23 SAME FOR TOMPKINS, ACCURACY. SHE TOLD YOU WHAT HER
01:25PM 24 EXPECTATIONS WERE.

01:25PM 25 SAME FOR BINGHAM. HE ALSO SAW STATEMENTS ABOUT ACCURACY,

01:25PM 1 AND HE EXPECTED HIS BLOOD TESTS TO BE ACCURATE.

01:25PM 2 THE THIRD ELEMENT FOR WIRE FRAUD AS TO PATIENTS IS ALSO AN
01:25PM 3 INTENT TO DEFRAUD. MUCH OF THE EVIDENCE THAT SUPPORTS THIS
01:25PM 4 ELEMENT WE HAVE REVIEWED. WE HAVE TALKED A LOT ABOUT THE
01:25PM 5 EVIDENCE SUPPORTING THIS INTENT ELEMENT, BUT I WANT TO GO
01:26PM 6 THROUGH SOME OF THE SPECIFIC EVIDENCE.

01:26PM 7 YOU CAN COMPARE THE ADVICE THAT HOLMES AND BALWANI WERE
01:26PM 8 GIVEN ABOUT THE CERTAIN WORDING TO USE THE APPROPRIATENESS OF
01:26PM 9 CERTAIN PHRASES, WITH WHAT WAS ACTUALLY COMMUNICATED ON THE
01:26PM 10 THERANOS WEBSITE.

01:26PM 11 SO YOU SAW THEN HOLMES AND BALWANI WERE WARNED AGAINST
01:26PM 12 SAYING THINGS LIKE "ONE TINY DROP OF BLOOD," AND THAT APPEARS
01:26PM 13 ON THE WEBSITE.

01:26PM 14 YOU SEE THAT THEY WERE WARNED TO REPLACE "HIGHEST LEVELS
01:26PM 15 OF ACCURACY" AND "HIGHEST LEVELS OF ACCURACY" STILL APPEARS ON
01:26PM 16 THE WEBSITE.

01:26PM 17 "FULL RANGE OF TESTS" SHOULD BE REPLACED, BUT "FULL RANGE
01:26PM 18 OF TESTS" STILL APPEARS.

01:26PM 19 AND "HIGHEST QUALITY." SAME THING, THAT STILL APPEARS.

01:26PM 20 WE TALKED ABOUT THIS A BIT WITH INVESTORS, BECAUSE
01:26PM 21 INVESTORS THOUGHT THEY WERE INVESTING IN A COMPANY THAT COULD
01:26PM 22 TEST ACCURATELY. THE SAME APPLIES TO PATIENTS. PATIENTS
01:26PM 23 THOUGHT THEY WERE GETTING THEIR BLOOD TESTED IN A COMPANY THAT
01:26PM 24 COULD TEST ACCURATELY.

01:26PM 25 YOU CAN DO THAT SAME EXERCISE WITH PATIENT BROCHURES. THE

01:27PM 1 PATIENT BROCHURES REFERENCE THE "ONE TINY DROP" OR THINGS LIKE
01:27PM 2 "ALL TESTS," OR "HIGHEST LEVELS OF ACCURACY." SO THE SAME SORT
01:27PM 3 OF DECEPTIVE INFORMATION THAT WAS COMMUNICATED ON THE WEBSITE
01:27PM 4 ALSO APPEARS IN SOME PATIENT BROCHURES.

01:27PM 5 YOU ALSO SEE INTENT TO DEFRAUD EVIDENCE IN THE TEXT
01:27PM 6 MESSAGES. HOLMES AND BALWANI ARE TALKING ABOUT PROBLEMS IN THE
01:27PM 7 LAB, THAT THEY NEED THE CTN, THE CAPILLARY TUBE AND NANOTAINER,
01:27PM 8 THEY NEED THAT FIXED. IT SEEMS THAT THEY'RE A MESS.

01:27PM 9 AND IN THIS TEXT MESSAGE IN SEPTEMBER OF 2015 YOU SEE
01:27PM 10 MR. BALWANI SAY, "WE CAN BUILD THIS BUSINESS THEY SOFTWARE AND
01:27PM 11 JP AND RUN CIRCLES AROUND OTHERS AND FDA BY MANIPULATING THEIR
01:27PM 12 GAME."

01:27PM 13 AND MS. HOLMES RESPONDS, "WE CAN DEFINITELY RUN CIRCLES."

01:27PM 14 YOU SEE THEY TALK ABOUT HOW TO MESSAGE THE INABILITY TO DO
01:28PM 15 CERTAIN TESTS OR THE PROBLEM AFTER THE FACT WITH CERTAIN TESTS
01:28PM 16 WHEN VIP'S ARE GETTING BLOOD DRAWS. AND IN THIS INSTANCE YOU
01:28PM 17 SEE THAT HOLMES AND BALWANI ARE INFORMED THAT A PROBLEM WITH A
01:28PM 18 PARTICULAR TEST WAS NOT THE RESULT OF HUMAN ERROR. THAT'S WHAT
01:28PM 19 YOU SEE AT THE VERY BOTTOM OF THE SCREEN. THEY'RE TRYING TO
01:28PM 20 FIGURE OUT WHAT THE PROBLEM WAS. AND HOLMES AND BALWANI ARE
01:28PM 21 TOLD, WELL, WE'RE DOING THIS ANALYSIS, IT IS NOT THAT THERE WAS
01:28PM 22 SOME HUMAN ERROR IN THE TESTING.

01:28PM 23 AND THEN LOOK AT WHAT MS. HOLMES AT THE TOP OF THE SCREEN
01:28PM 24 SUGGESTS MESSAGING NEVERTHELESS, "YOU CAN SAY WE DO RUN THOSE
01:28PM 25 ASSAYS, BUT WERE NOT ABLE TO RUN THEM ON THIS SAMPLE,

01:28PM 1 APPARENTLY DUE TO A HUMAN ERROR IN SAMPLE HANDLING."

01:28PM 2 DR. ROSENDORFF TOLD YOU THAT HE FELT PRESSURE TO EXPLAIN
01:28PM 3 AWAY RESULTS, THAT THAT PRESSURE CAME FROM HOLMES AND BALWANI,
01:28PM 4 BUT THAT HE FELT HIS JOB AT THERANOS EVOLVED INTO EXPLAINING
01:29PM 5 AWAY THESE INACCURATE RESULTS. AND THAT'S STRONG INTENT
01:29PM 6 EVIDENCE.

01:29PM 7 YOU KNOW WHAT GOAL HOLMES AND BALWANI ARE SEEKING TO
01:29PM 8 ACHIEVE WHEN THEY'RE ASKING THEIR LAB DIRECTOR TO JUSTIFY, TO
01:29PM 9 EXPLAIN AWAY, TO COVER FOR THE INACCURATE TESTING THAT IS
01:29PM 10 OCCURRING AT THERANOS.

01:29PM 11 YOU SAW THIS LINE OF QUESTIONING AND EXHIBITS. WHEN
01:29PM 12 INSPECTORS CAME TO THERANOS, THEY HAD INTERNALLY A LONG
01:29PM 13 DISCUSSION ABOUT THE ROUTE THAT THE INSPECTORS WOULD TAKE, THE
01:29PM 14 WALKING ROUTE.

01:29PM 15 AND DR. ROSENDORFF TOLD YOU THAT THERE WERE INSTRUCTIONS
01:29PM 16 GIVEN SO THAT PEOPLE WOULDN'T BE COMING IN AND OUT OF CERTAIN
01:29PM 17 LABS, LIKE THE R&D LAB. AGAIN, STRONG INTENT EVIDENCE.

01:29PM 18 IS HE TRYING TO CREATE A LAB THAT PROVIDES ACCURATE AND
01:29PM 19 RELIABLE BLOOD TESTING OR IS HE TRYING TO GET PATIENT MONEY
01:29PM 20 WITH A LAB WHILE OPERATING A LAB THAT DOESN'T PROVIDE THOSE
01:29PM 21 THINGS? YOU CAN SEE HIS INTENT BY THESE KINDS OF ACTIONS.

01:30PM 22 AND THERE'S MANY MORE EMAILS. I'M SHOWING YOU HERE JUST A
01:30PM 23 SUMMARY OF THE ASSAY, THE TYPE OF PROBLEM THAT WAS REPORTED TO
01:30PM 24 MR. BALWANI AND THE EXHIBIT NUMBER.

01:30PM 25 I'VE SHOWN YOU SOME OF THE EXHIBIT, BUT YOU CERTAINLY HAVE

01:30PM 1 SEEN MORE HERE DURING THE COURSE OF THE TRIAL WHERE SPECIFIC
01:30PM 2 ISSUES WITH SPECIFIC ASSAYS WERE BROUGHT TO MR. BALWANI'S
01:30PM 3 ATTENTION.

01:30PM 4 THE FINAL ELEMENT FOR PATIENTS IS THE INTERSTATE NEXUS
01:30PM 5 ELEMENT. AND THE MEHRL ELLSWORTH IS BASED ON THIS FAX. SO
01:30PM 6 RECALL THAT MEHRL ELLSWORTH RECEIVED THIS PSA TEST ON OR AROUND
01:30PM 7 MAY 16TH, AND IT WAS FAXED FROM THE THERANOS FAX NUMBER THAT
01:30PM 8 WAS LISTED AS A 650 AREA CODE, AND IT GOES TO HIS DOCTOR,
01:30PM 9 DR. BURNES.

01:30PM 10 DR. BURNES TOLD YOU HIS OFFICE WAS IN ARIZONA. SO THAT
01:30PM 11 FAX CROSSES INTERSTATE LINES. THIS IS NOT A FACT WHERE THERE
01:31PM 12 WAS A STIPULATION BETWEEN THE PARTIES. I TOLD YOU THERE WERE
01:31PM 13 STIPULATIONS BETWEEN THE PARTIES AND -- BUT ONLY SOME FOR THE
01:31PM 14 FOURTH ELEMENT, THE INTERSTATE NEXUS ELEMENT, FOR THE BANKING
01:31PM 15 ONES, BUT NOT FOR THESE, NOT FOR THE FAX ONES. SO THAT'S WHY
01:31PM 16 I'M SPENDING THE TIME TO GO THROUGH WITH YOU THAT THIS ONE WAS
01:31PM 17 FAXED FROM THERANOS IN CALIFORNIA TO ELLSWORTH'S DOCTOR IN
01:31PM 18 ARIZONA AND THE SAME IS TRUE FOR TOMPKINS. SHE ALSO GOT HER
01:31PM 19 LABS FAXED FROM 650 TO HER DOCTOR, DR. ASIN, A-S-I-N, AND YOU
01:31PM 20 SEE THE DATE HERE IS MAY 11TH, 2015.

01:31PM 21 THE BINGHAM INTERSTATE IS A PHONE CALL. MR. BINGHAM TOLD
01:31PM 22 YOU HE WAS LIVING IN ARIZONA AT THE TIME THAT HE WAS CONCERNED
01:31PM 23 ABOUT SOME OF THE RESULTS THAT HE WAS SEEING FROM THERANOS
01:31PM 24 TESTS. SO HE CALLED CUSTOMER SERVICE.

01:31PM 25 DAN EDLIN TOLD YOU THAT THERANOS WAS LOCATED IN PALO ALTO.

01:32PM 1 SO YOU KNOW THAT WAS AN INTERSTATE WIRE. THAT WENT FROM
01:32PM 2 BINGHAM IN ARIZONA TO THERANOS CUSTOMER SERVICE IN CALIFORNIA.
01:32PM 3 YOU ALSO KNOW THE IMPORTANCE OF THAT PHONE CALL. AS PART OF
01:32PM 4 THE SCHEME, THERANOS HAD A CUSTOMER SERVICE DEPARTMENT.

01:32PM 5 AS A LAB, THAT CUSTOMER SERVICE DEPARTMENT TOOK PHONE
01:32PM 6 CALLS FROM PATIENTS, AND IF DURING THOSE PHONE CALLS THE
01:32PM 7 CUSTOMER SERVICE LAB WAS TELLING PATIENTS THINGS LIKE, YOU'RE
01:32PM 8 RIGHT, OUR TESTING IS INACCURATE, THIS SCHEME ENDS.

01:32PM 9 SO FAR THE EXISTENCE OF THIS CUSTOMER SERVICE LAB IS
01:32PM 10 NECESSARY IN ORDER FOR THE SCHEME TO CONTINUE. THE CUSTOMER
01:32PM 11 SERVICE LAB HAS TO EXIST AND HAS TO COMMUNICATE WITH
01:32PM 12 INDIVIDUALS LIKE BINGHAM.

01:32PM 13 SO NOT ONLY IS THIS AN INTERSTATE WIRE, A PHONE CALL FROM
01:32PM 14 ARIZONA TO PALO ALTO, IT'S ESSENTIAL, IT'S NECESSARY IN ORDER
01:32PM 15 FOR THE SCHEME TO CONTINUE.

01:32PM 16 AND THEN HERE'S THE FINAL INTERSTATE WIRE. THIS IS THE
01:32PM 17 WIRE THAT THERANOS SENT TO PURCHASE ADVERTISING IN ARIZONA AND
01:33PM 18 IN THE EMAIL, IT'S EXHIBIT 5454, YOU CAN SEE DANISE YAM ASKING
01:33PM 19 FOR PERMISSION FROM HOLMES AND BALWANI TO INITIATE THIS WIRE.

01:33PM 20 AND EVEN FURTHER DOWN YOU CAN SEE THE PURPOSE OF THE
01:33PM 21 WIRE, THAT IS, WHAT THEY'RE INTENDING TO DO WITH THE FUNDS.
01:33PM 22 AND IT TALKS ABOUT ADVERTISING, BOTH STATIC AND DIGITAL AT
01:33PM 23 CERTAIN LOCATIONS, AIRPORT AND CINEMA.

01:33PM 24 SO YOU SEE THAT THERANOS, AS PART OF THE SCHEME, WE'VE
01:33PM 25 TALKED ABOUT ADVERTISING, CREATING PATIENT BROCHURES AND THE

WEBSITE, BUT ALSO SPENDING MONEY, THIS FINANCIAL TRANSFER FOR THE PURPOSE OF FURTHER ADVERTISING IN THE ARIZONA MARKET.

AND FOLKS LIKE MS. TOMPKINS TOLD YOU THEY RECALL HEARING SOME ADVERTISING OR COMMERCIALS FOR THERANOS IN THE ARIZONA MARKET.

WE'VE TALKED ABOUT THE ELEMENTS FOR CONSPIRACY AND WIRE FRAUD. THERE'S ANOTHER CONCEPT THAT I WILL TALK TO YOU ABOUT, YOU'LL HEAR AIDING AND ABETTING. AND I TOLD YOU THERE WERE INSTANCES WHEN MR. BALWANI CAN BE RESPONSIBLE FOR THE INVESTMENTS BY INVESTORS THAT HE DID NOT COMMUNICATE WITH. SO TOLBERT IS THE CLASSIC EXAMPLE OF THAT IN THIS TRIAL OF THAT.

TOLBERT GOT ON THE STAND AND TOLD YOU THAT HE HAD NEVER SEEN AND PROBABLY NEVER MET SUNNY BALWANI AND DIDN'T EVER THINK HE TALKED TO HIM. AND I TOLD YOU TODAY WE WILL TALK ABOUT HOW MR. BALWANI CAN STILL BE HELD RESPONSIBLE FOR THOSE KIND OF INVESTMENTS AND IT'S FOR THEORIES SUCH AS AIDING AND ABETTING. IT IS SOMETHING THAT THE GOVERNMENT SEPARATELY, YOU'LL SEE IN THE JURY INSTRUCTIONS THAT THE JUDGE READS TO YOU, THAT ALSO HAS ELEMENTS THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT FOR YOU TO CONVICT MR. BALWANI ON THIS THEORY OF LIABILITY.

AND MR. BALWANI CAN BE HELD RESPONSIBLE FOR ACTIONS EVEN IF HE DID NOT PERSONALLY COMMIT THE ACT OR ACTS THAT CONSTITUTES THE CRIME, THE CRIME OF WIRE FRAUD AS TO MR. TOLBERT, AND THERE ARE FOUR ELEMENTS.

01:35PM 1 THE FIRST ELEMENT IS THAT SOMEONE ELSE COMMITTED THE
01:35PM 2 CONDUCT CHARGED IN THE SPECIFIC WIRE FRAUD COUNTS. THE WIRE
01:35PM 3 FRAUD COUNTS ARE THREE THROUGH TWELVE IN THE INDICTMENT. THAT
01:35PM 4 INCLUDES BOTH THE INVESTOR COUNTS AND THE PATIENT COUNTS.

01:35PM 5 AND HERE THAT SOMEONE ELSE IS ELIZABETH HOLMES.

01:35PM 6 I WANT TO FOCUS ON THREE COUNTS WITH YOU, THREE, FOUR, AND
01:35PM 7 FIVE: EISENMAN, LUCAS, AND TOLBERT BECAUSE TO ONE EXTENT OR
01:35PM 8 ANOTHER THEY HAD LESS OR NO COMMUNICATIONS WITH MR. BALWANI,
01:35PM 9 AND WE'LL TALK ABOUT THE EFFECT THAT AIDING AND ABETTING HAS ON
01:35PM 10 THOSE PARTICULAR COUNTS.

01:35PM 11 BUT ONE THING THAT IMPORTANT IS THE DATE OF THE
01:35PM 12 INVESTMENT. SO EISENMAN, LUCAS AND TOLBERT ALL INVESTED OVER
01:35PM 13 THE COURSE OF TWO DAYS, DECEMBER 30TH AND DECEMBER 31ST OF
01:36PM 14 2013. AND I'VE PUT ON HERE THE INTERACTIONS THAT THEY HAD
01:36PM 15 BEFORE THE INVESTMENT. EISENMAN TALKED TO HOLMES AND HE ALSO
01:36PM 16 RECEIVED THAT MENDENHALL SUMMARY EMAIL THAT SUMMARIZED
01:36PM 17 MENDENHALL'S CONVERSATION WITH BALWANI.

01:36PM 18 BUT LUCAS AND TOLBERT HAD PRE-INVESTMENT COMMUNICATIONS
01:36PM 19 WITH ELIZABETH HOLMES.

01:36PM 20 THE SECOND ELEMENT IS THAT THE DEFENDANT AIDED, OR
01:36PM 21 COUNSELLED, COMMANDED, INDUCED, OR PROCURED THAT PERSON, AGAIN
01:36PM 22 ELIZABETH HOLMES, WITH RESPECT TO AT LEAST ONE ELEMENT OF WIRE
01:36PM 23 FRAUD AS CHARGED IN COUNTS TWO -- I'M SORRY, COUNTS THREE
01:36PM 24 THROUGH TWELVE OF THE INDICTMENT.

01:36PM 25 THE THIRD ELEMENT IS THAT THE DEFENDANT ACTED WITH THE

01:36PM 1 INTENT TO FACILITATE WIRE FRAUD AS CHARGED IN THOSE COUNTS, AND
01:36PM 2 THE AIDING, THE ROLE THAT BALWANI PLAYED IN THE INTENT.

01:36PM 3 SO SECOND AND THIRD ELEMENTS INCLUDES EVIDENCE THAT WE
01:36PM 4 HAVE TALKED ABOUT ALREADY. I'M NOT GOING TO RESHOW YOU THAT
01:36PM 5 EVIDENCE.

01:36PM 6 BUT THE ROLE THAT BALWANI PLAYED IN AIDING WIRE FRAUD AND
01:37PM 7 INTENDING TO DEFRAUD IS EVIDENCE THAT WE HAVE COVERED ALREADY.

01:37PM 8 BUT THIS FOURTH ELEMENT IS PARTICULARLY NEW. LET'S LOOK
01:37PM 9 AT THAT.

01:37PM 10 THE DEFENDANT ACTED BEFORE THE CRIME WAS COMPLETED. THAT
01:37PM 11 IS, THE AID THAT HE PROVIDED TO HOLMES HAS TO BE BEFORE THE
01:37PM 12 CRIME WAS COMMITTED, NOT AFTER. AND IN THIS INSTANCE, I TOLD
01:37PM 13 YOU WHEN WE FIRST TALKED ABOUT, THE MENDENHALL PHONE CALL IS
01:37PM 14 IMPORTANT BECAUSE IT HAPPENED ON DECEMBER 22ND, 2013, AND
01:37PM 15 BEFORE THE END OF DECEMBER INVESTMENTS BY THE INVESTORS THAT WE
01:37PM 16 JUST TALKED ABOUT.

01:37PM 17 SO MR. BALWANI DID AID, HE DID PLAY A ROLE BEFORE THOSE
01:37PM 18 INVESTMENTS, COUNTS THREE, FOUR, AND FIVE.

01:37PM 19 I WANT TO TALK TO YOU ABOUT A FEW ADDITIONAL TOPICS BEFORE
01:37PM 20 I SIT DOWN. AND THE FIRST TOPIC IS SOME ARGUMENTS THAT THE
01:37PM 21 DEFENSE MADE TO YOU DURING THE COURSE OF THE TRIAL.

01:37PM 22 KEEP IN MIND THE GOVERNMENT BEARS THE BURDEN OF PROOF
01:37PM 23 HERE. THE DEFENSE DOESN'T HAVE TO SPEAK. THEY DON'T HAVE TO
01:37PM 24 GIVE AN OPENING OR A CLOSING. THEY DON'T HAVE TO QUESTION
01:38PM 25 WITNESSES.

01:38PM 1 BUT WHEN THEY DO, WHEN THEY DO CHOOSE TO MAKE ARGUMENTS,
01:38PM 2 WHEN THEY DO CHOOSE TO CALL WITNESSES, IT IS APPROPRIATE FOR
01:38PM 3 YOU TO THINK CRITICALLY ABOUT THE ARGUMENTS THAT THEY'RE MAKING
01:38PM 4 TO YOU JUST LIKE YOU THINK CRITICALLY ABOUT THE ARGUMENTS THAT
01:38PM 5 THE GOVERNMENT MAKES.

01:38PM 6 AND I WANT TO TALK ABOUT A FEW OF THEM WITH YOU TODAY.

01:38PM 7 THE FIRST ONE I WANT TO TALK TO YOU ABOUT IS AN ARGUMENT
01:38PM 8 THAT COUNSEL HAS MADE TO YOU THAT SORT OF TAKES A FEW DIFFERENT
01:38PM 9 FORMS. THEY'VE ARGUED THAT THERE WERE REAL SCIENTISTS WORKING
01:38PM 10 AT THERANOS DOING REAL WORK, SIGNING VALIDATION REPORTS SO THAT
01:38PM 11 WHEN THE TESTS WERE IN THE LAB, IN THE CLIA LAB, NOT
01:38PM 12 PERFORMING, NOT ACCURATELY TESTING PATIENT BLOOD, WELL, IT'S
01:38PM 13 NOT BALWANI'S FAULT. HE WAS RELYING ON THESE VALIDATION
01:38PM 14 REPORTS THAT HAD A BUNCH OF SIGNATURES ON THEM.

01:38PM 15 AND THE ARGUMENT GOES EVEN FURTHER. AND THE DEFENSE HAS,
01:38PM 16 AND THEY MAY CONTINUE TO SHOW YOU, INTERNAL EMAILS AT THERANOS
01:38PM 17 WHERE OPTIMISTIC OR POSITIVE THINGS ABOUT THERANOS'S TECHNOLOGY
01:39PM 18 ARE BEING COMMUNICATED TO MR. BALWANI.

01:39PM 19 THE IDEA BEING THAT IF MR. BALWANI THEN COMMUNICATES
01:39PM 20 OPTIMISTIC THINGS TO THIRD PARTIES, TO INVESTORS OR PATIENTS
01:39PM 21 EXTERNAL TO THERANOS, IT'S NOT BECAUSE HE'S INTENDING TO
01:39PM 22 DEFRAUD THIS THIRD PARTY. HE'S JUST A CONDUIT. HE'S RECEIVING
01:39PM 23 INTERNAL OPTIMISTIC THINGS ABOUT THERANOS, AND HE'S SHARING
01:39PM 24 THOSE INTERNAL OPTIMISTIC THINGS TO OTHERS.

01:39PM 25 AND I WANT TO UNPACK THAT A LITTLE WITH YOU.

01:39PM 1 FIRST, LET'S SPEND A MOMENT TALKING ABOUT THE TWO
01:39PM 2 DIFFERENT LABS AT THERANOS. THEY HAD A RESEARCH AND
01:39PM 3 DEVELOPMENT LAB AND A CLIA LAB. YOU HEARD THAT IN THE RESEARCH
01:39PM 4 AND DEVELOPMENT LAB THEY WORKED ON THE ASSAYS, THE CHEMISTRIES
01:39PM 5 THAT WHEN YOU ADD THEM TO THE PATIENT BLOOD, IT GENERATES A
01:39PM 6 RESULT OR A REACTION, AND THAT'S TRANSLATED INTO A SCORE, A
01:39PM 7 BLOOD TEST RESULT.

01:39PM 8 AND THAT AFTER THE WORK WAS DONE IN THE R&D LAB, THERANOS
01:40PM 9 PREPARED A VALIDATION REPORT, A DOCUMENT, AND THAT WAS THE
01:40PM 10 THING THAT MOVED THE ASSAY FROM THE R&D LAB INTO THE CLIA LAB.

01:40PM 11 AND DR. ROSENDORFF TOLD YOU SOMETHING INTERESTING ABOUT
01:40PM 12 THAT WORK, THE WORK OF MOVING TESTS FROM THE R&D LAB INTO THE
01:40PM 13 CLIA LAB.

01:40PM 14 DR. ROSENDORFF TOLD YOU THAT IN THE RUNOFF TO THE
01:40PM 15 WALGREENS LAUNCH, IN SEPTEMBER OF 2013, HE FELT, IN HIS WORDS,
01:40PM 16 IMMENSE PRESSURE, THAT THERE WAS IMMENSE PRESSURE PLACED ON THE
01:40PM 17 SCIENTISTS AT THERANOS TO VALIDATE ASSAYS, THAT THE ASSAYS WERE
01:40PM 18 NOT BEING VALIDATED WHEN THEY WERE READY, BUT RATHER BECAUSE OF
01:40PM 19 THIS PRESSURE.

01:40PM 20 AND WHAT DR. ROSENDORFF TOLD YOU WAS ACTUALLY SUPPORTED BY
01:40PM 21 THE EVIDENCE.

01:40PM 22 IF YOU LOOK AT THE EVIDENCE, YOU SAW VALIDATION REPORTS IN
01:40PM 23 THIS CASE. I WAS PUTTING OUT SOME OF THEM TO YOU WHEN
01:40PM 24 DR. DHAWAN WOULD SIGN THEM ALL ON SEPTEMBER 19TH, IF YOU LOOK
01:41PM 25 AT ALL OF THE VALIDATION REPORTS THAT WERE PRESENTED TO YOU AND

01:41PM 1 GRAPH THEM AGAINST THE DATE THEY WERE VALIDATED AGAINST
01:41PM 2 THERANOS'S CASH BALANCE, YOU SEE SOMETHING INTERESTING,
01:41PM 3 THERANOS WAS VALIDATING ITS ASSAYS WHEN THEY NEEDED MONEY, NOT
01:41PM 4 WHEN THE SCIENCE WAS READY.

01:41PM 5 REMEMBER WE TALKED ABOUT IN THAT PERIOD OF TIME IN LATE
01:41PM 6 SEPTEMBER OF 2013, WHEN THERANOS WAS DOWN TO ABOUT \$7 MILLION,
01:41PM 7 THAT'S WHEN THERANOS IS VALIDATING MOST OF THOSE ASSAYS, AND
01:41PM 8 THEN ALL OF THE INVESTOR MONEY COMES IN IN LATE 2013, AND ON A
01:41PM 9 COUPLE OF OCCASIONS IN '14, ALL OF THE VALIDATION WORK PETERS
01:41PM 10 OUT. THEY STOP VALIDATING AT THAT POINT. THERANOS WAS
01:41PM 11 VALIDATING ASSAYS BECAUSE THEY NEEDED MONEY, NOT BECAUSE THE
01:41PM 12 SCIENCE WAS READY.

01:41PM 13 YOU KNOW THIS ALSO HAS AN APPLICATION TO THIS IDEA THAT
01:42PM 14 INTERNAL OPTIMISTIC EMAILS THAT GO TO BALWANI HELP YOU
01:42PM 15 UNDERSTAND THAT HE ACTUALLY HAD GOOD INTENT, THAT HE WAS JUST
01:42PM 16 COMMUNICATING WHAT HE HEARD, BUT THESE ARE THE SAME
01:42PM 17 INDIVIDUALS, THE SAME EMPLOYEES THAT ARE RECEIVING THE PRESSURE
01:42PM 18 FROM MR. BALWANI, THE SAME PRESSURE TO VALIDATE ASSAYS, NOT
01:42PM 19 BECAUSE THE SCIENCE IS READY, BUT BECAUSE THERANOS NEEDS MONEY.

01:42PM 20 SO WHEN AN INTERNAL EMPLOYEE WRITES AN EMAIL SAYING
01:42PM 21 SOMETHING POSITIVE, THEY'RE SAYING IT IN AN ENVIRONMENT WHERE
01:42PM 22 THEY'RE BEING PRESSURED TO VALIDATE NOT BASED ON SCIENTIFIC
01:42PM 23 READINESS BUT BASED ON FINANCIAL DESPERATION.

01:42PM 24 THE SECOND ARGUMENT THAT I WANT TO SPEND A MOMENT TALKING
01:42PM 25 TO YOU ABOUT IS THIS IDEA THAT MR. BALWANI COMMUNICATED

01:42PM 1 FINANCIAL PROJECTIONS BUT THEY WERE JUST THAT, THEY WERE
01:42PM 2 PROJECTIONS, AND, THEREFORE, THEY DID NOT MISLEAD INVESTORS,
01:42PM 3 BECAUSE INVESTORS KNEW THAT THEY WERE PROJECTIONS, NOT ACTUAL.
01:42PM 4 AND IT EVEN GOES A LITTLE BIT FURTHER AND SAYS, NOT ONLY DID HE
01:42PM 5 COMMUNICATE PROJECTIONS, BUT HE REVEALED THE UNDERLYING
01:43PM 6 ASSUMPTIONS BEHIND THOSE PROJECTIONS SO THAT IT WASN'T, IT
01:43PM 7 WASN'T DECEPTIVE FOR AN INVESTOR TO RECEIVE THIS INFORMATION
01:43PM 8 BECAUSE THE INVESTOR, ONE, KNEW IT WAS A PROJECTION, AND, TWO,
01:43PM 9 EVEN KNEW, BECAUSE MR. BALWANI WAS TRANSPARENT, THE ASSUMPTIONS
01:43PM 10 BEHIND THAT.

01:43PM 11 BUT, AGAIN, YOU THINK CRITICALLY ABOUT THAT ARGUMENT
01:43PM 12 FAILS, AND IT FAILS FOR SEVERAL REASONS. FIRST, LOOK AT HOW
01:43PM 13 WILDLY OFF THOSE PROJECTIONS ARE. MOSLEY TALKED TO YOU A
01:43PM 14 LITTLE BIT ABOUT THIS. MOSLEY RECEIVED THE PROJECTIONS, AND HE
01:43PM 15 THOUGHT THE 2014 NUMBERS SHOULD BE PRETTY ACCURATE BECAUSE HE
01:43PM 16 RECEIVED THEM IN OCTOBER, AND IF IN OCTOBER HE'S BEING TOLD
01:43PM 17 THAT BY THE END OF THE YEAR THERANOS EXPECTS TO RECEIVE
01:43PM 18 \$140 MILLION IN REVENUE, MOSLEY THOUGHT THAT WOULD BE PRETTY
01:43PM 19 CLOSE TO ACCURATE.

01:43PM 20 BUT MOSLEY CUT THEM SOME SLACK FOR '15. HE KNEW THAT '15
01:43PM 21 WASN'T ACTUAL. BUT HE NEVER EXPECTED, NO INVESTOR WOULD EVER
01:43PM 22 EXPECT THAT THEY WOULD BE THIS WILDLY OFF. WHEN YOU LOOK AT
01:44PM 23 WHAT THEIR ACTUAL REVENUE WAS COMPARED TO WHAT WAS PROJECTED,
01:44PM 24 IT IS OFF BY A HUGE MARGIN. IN FACT, IF YOU TRACE BACK
01:44PM 25 THERANOS'S ACTUAL REVENUE NUMBERS TO 2 -- 2009, THEIR BEST YEAR

01:44PM 1 WAS 2009.

01:44PM 2 DO YOU REMEMBER YOU HEARD THE ARGUMENT THAT IN 2009, THE
01:44PM 3 GREAT RECESSION HAPPENED AND COMPANIES WERE ALL STRUGGLING.
01:44PM 4 THAT WAS ACTUALLY THE YEAR THAT THERANOS GENERATED THE MOST
01:44PM 5 REVENUE, ALMOST \$3 MILLION IN REVENUE.

01:44PM 6 AND AFTER THAT THE REVENUE WENT DOWN.

01:44PM 7 IN 2010 AND '11, AND THEN THROUGH THE YEARS THAT THE
01:44PM 8 INVESTORS RECEIVED THESE FINANCIAL PROJECTIONS, AND THAT THE
01:44PM 9 SAME ARGUMENT THAT I MADE TO YOU A MOMENT AGO ABOUT THERANOS
01:44PM 10 VALIDATING ASSAYS BECAUSE THEY NEEDED MONEY, NOT BECAUSE OF
01:44PM 11 SCIENCE, EQUALLY APPLIES HERE.

01:44PM 12 YOU HEARD INVESTORS TELL YOU THAT THEY BELIEVED THAT
01:44PM 13 THERANOS OPERATED WHAT WAS CALLED STEALTH MODE FROM 2003 TO
01:45PM 14 2013, FOR THIS TEN YEAR PERIOD, AND THAT INVESTORS WERE UNDER
01:45PM 15 THE IMPRESSION THAT THAT WAS A GOOD THING, THAT THERANOS STAYED
01:45PM 16 UNDER THE RADAR UNTIL IT DEVELOPED TECHNOLOGY TO THE POINT THAT
01:45PM 17 IT WAS READY TO GO PUBLIC, TO RELEASE THIS ON REAL PATIENTS IN
01:45PM 18 WALGREENS STORES.

01:45PM 19 BUT WHAT YOU SEE HERE IS THAT THERANOS LEFT STEALTH MODE
01:45PM 20 NOT BECAUSE IT WAS READY, NOT BECAUSE THE TECHNOLOGY WAS READY,
01:45PM 21 BUT BECAUSE THEY COULDN'T AFFORD TO BE IN STEALTH MODE ANY
01:45PM 22 LONGER.

01:45PM 23 THERE'S A FEW OTHER ARGUMENTS THAT I WANT TO MAKE TO YOU
01:45PM 24 OR REMIND YOU THAT THE DEFENSE HAS MADE. AND THE FIRST ONE IS
01:45PM 25 THAT MR. BALWANI GUARANTEED A LOAN. DO YOU REMEMBER THIS

01:45PM 1 ARGUMENT THAT AROUND 2009 OR 2010 THERANOS WAS RUNNING OUT OF
01:45PM 2 MONEY, AND BECAUSE OF THE RECESSION, IT WAS DIFFICULT TO GET
01:45PM 3 FUNDING? AND A FINANCIAL INSTITUTION LENT MONEY TO THERANOS,
01:45PM 4 AND MR. BALWANI SIGNED OFF ON THAT LOAN. HE DIDN'T GIVE THE
01:45PM 5 MONEY TO THERANOS, BUT HE SIGNED OFF SO THAT IF THERANOS
01:46PM 6 DEFAULTED ON THAT LOAN, MR. BALWANI WOULD BE ON THE HOOK. HE
01:46PM 7 WOULD ALSO BE RESPONSIBLE.

01:46PM 8 AND FROM THIS ARGUMENT, I THINK THAT COUNSEL WANTS YOU TO
01:46PM 9 BELIEVE THAT THIS IS PROOF THAT MR. BALWANI BELIEVED IN THE
01:46PM 10 COMPANY, BELIEVED IN THE TECHNOLOGY.

01:46PM 11 IN FACT, IN OPENING, THEY WENT AS FAR AS TO TELL YOU THAT
01:46PM 12 MR. BALWANI DID NOT GUARANTEE THIS LOAN BECAUSE HIS GIRLFRIEND,
01:46PM 13 ELIZABETH HOLMES, WAS RUNNING THE COMPANY, BUT RATHER BECAUSE
01:46PM 14 HE DID DUE DILIGENCE, BECAUSE HE LEARNED ABOUT THERANOS AND HE
01:46PM 15 REALLY BELIEVED IN IT.

01:46PM 16 THERE'S NO EVIDENCE OF THAT.

01:46PM 17 WHAT YOU KNOW IS THAT MR. BALWANI GUARANTEED A LOAN AND
01:46PM 18 FROM THAT YOU CAN REACH TWO CONCLUSIONS. IT'S EVIDENCE OF
01:46PM 19 KNOWLEDGE, AND IT'S EVIDENCE OF MOTIVE.

01:46PM 20 WHEN I SAY "KNOWLEDGE," WHAT I MEAN IS THAT EVEN IN 2009
01:46PM 21 BEFORE MR. BALWANI STARTS WORKING AT THERANOS, HE KNOWS FIRST
01:46PM 22 IT'S RUNNING OUT OF MONEY AND IT NEEDS MONEY BECAUSE HE'S GOING
01:46PM 23 TO HELP GUARANTEE A LOAN; AND, SECOND, THAT WHATEVER THEY'RE
01:46PM 24 DOING TO GENERATE REVENUE UP UNTIL THAT POINT, IT'S NOT
01:47PM 25 WORKING. THEY HAVE TO DO SOMETHING GOING FORWARD. SO HIS

01:47PM 1 ACTION OF GUARANTEEING THIS LOAN IS EVIDENCE OF KNOWLEDGE.

01:47PM 2 IT'S ALSO MOTIVE EVIDENCE.

01:47PM 3 BEFORE HE GUARANTEES THE LOAN, MR. BALWANI CAN SIT ON THE
01:47PM 4 SIDELINES AND ROOT FOR THERANOS'S SUCCESS. HIS GIRLFRIEND
01:47PM 5 WORKS THERE. HE HOPES IT'S SUCCESSFUL. IF IT IS, IT WILL
01:47PM 6 REVOLUTIONIZE BLOOD TESTING.

01:47PM 7 ONCE HE GUARANTEES A LOAN, HE HAS SKIN IN THE GAME. NOW
01:47PM 8 IT'S IMPORTANT TO MR. BALWANI. BOTTOM LINE, IT'S IMPORTANT TO
01:47PM 9 HIM THAT THERANOS BE A SUCCESS.

01:47PM 10 AND BECAUSE HE KNOWS THAT THERANOS NEEDS MONEY, AND
01:47PM 11 WHATEVER IT HAS BEEN DOING ISN'T WORKING, HE KNOWS THAT THEY
01:47PM 12 HAVE TO DO SOMETHING DIFFERENT IN THE FUTURE.

01:47PM 13 YOU ALSO HEARD THAT IT WAS ON THIS OCCASION THAT
01:47PM 14 MR. BALWANI BEGAN TO GET OPTIONS OR STOCK. SO NOT ONLY DOES HE
01:47PM 15 HAVE SKIN IN THE GAME AND NOT ONLY IS HE ON THE LINE FOR
01:47PM 16 THERANOS'S FUTURE SUCCESS, BUT HE WILL PROFIT. HE HAS OPTIONS
01:48PM 17 IN THERANOS'S STOCK. SO HOW IT DOES IN THE FUTURE, AGAIN,
01:48PM 18 ISN'T SOMETHING THAT HE CAN SIT ON THE SIDELINES AND ROOT FOR
01:48PM 19 THE SUCCESS, BUT IT ACTUALLY NOW BENEFITS HIM PERSONALLY.

01:48PM 20 THE DEFENSE HAS ALSO MADE ARGUMENTS TO YOU ABOUT THIS IDEA
01:48PM 21 THAT THERANOS MISSPENT INVESTOR MONEY. THAT WHEN BALWANI LEFT
01:48PM 22 THERANOS, THERE WAS STILL MONEY IN THE BANK, THAT THEY HAD REAL
01:48PM 23 SCIENTISTS, THAT THEY HAD PATENTS, THAT THERANOS WAS SPENDING
01:48PM 24 INVESTOR MONEY ON THERANOS EXPENSES.

01:48PM 25 AND I WANT TO THINK CRITICALLY FOR A MOMENT ABOUT THAT

01:48PM 1 ARGUMENT. FIRST, YOU KNOW THAT THERE ARE DIFFERENT KINDS OF
01:48PM 2 FRAUD. YOU CERTAINLY HAVE HEARD INSTANCES WHERE A FRAUDSTER
01:48PM 3 WILL SAY GIVE ME YOUR MONEY AND I'LL INVEST IT IN THE STOCK
01:48PM 4 MARKET, AND INSTEAD SPENDS IT ON A HOUSE OR A CAR OR
01:48PM 5 EXTRAVAGANT TRAVEL, JUST COMPLETE MISSPENDS INVESTOR MONEY.
01:48PM 6 THAT'S ONE FORM OF FRAUD. THAT JUST DOESN'T HAPPEN TO BE THE
01:48PM 7 FRAUD THAT THE GOVERNMENT CHARGED MR. BALWANI WITH COMMITTING.

01:48PM 8 SO WHEN THEY TELL YOU THAT MR. BALWANI, OR THERANOS
01:49PM 9 GENERALLY, WERE SPENDING INVESTOR MONEY ON THERANOS EXPENSES,
01:49PM 10 ESSENTIALLY WHAT THEY'RE TELLING YOU IS THAT MR. BALWANI DIDN'T
01:49PM 11 COMMIT A CRIME BUT A CRIME THAT HE WASN'T CHARGED WITH. YOU
01:49PM 12 KNOW THAT INVESTORS INVESTED BECAUSE THEY THOUGHT THERANOS WAS
01:49PM 13 ONE THING.

01:49PM 14 THEY THOUGHT THAT IT HAD BEEN VALIDATED BY PHARMA. ALL OF
01:49PM 15 THE CATEGORIES OF FALSE STATEMENTS. THEY INVESTED BECAUSE THEY
01:49PM 16 THOUGHT THAT THE STORY OF THERANOS WAS WHAT THEY HAD BEEN TOLD,
01:49PM 17 WHEN, IN FACT, IT WAS SOMETHING DIFFERENT.

01:49PM 18 WHEN MR. BALWANI SAYS WE SPENT THE INVESTOR MONEY ON
01:49PM 19 THERANOS EXPENSES, HE'S TELLING YOU BALWANI DIDN'T COMMIT SOME
01:49PM 20 OTHER FRAUD, SOME OTHER WAY OF MISSPENDING INVESTOR MONEY.

01:49PM 21 IT'S ACTUALLY A LITTLE MORE NUANCED THAN THAT BECAUSE YOU
01:49PM 22 HEARD SOME INVESTORS SAY THAT THEY INVESTED BECAUSE THEY
01:49PM 23 THOUGHT THAT THEIR MONEY WAS GOING TO GO TO THE WALGREENS
01:49PM 24 ROLLOUT, THAT THE TECHNOLOGY WAS DONE, AND THAT THERANOS JUST
01:49PM 25 NEEDED TO EXPAND QUICKLY.

01:49PM 1 AND YOU KNOW THAT WASN'T TRUE. YOU'VE SEEN THE EVIDENCE
01:49PM 2 THAT ACTUALLY WHAT THERANOS NEEDED WAS TO CREATE THE TECHNOLOGY
01:50PM 3 TO PERFORM THIS BLOOD TESTING.

01:50PM 4 SO THERE IS EVEN A LITTLE BIT OF THE INVESTORS THINKING
01:50PM 5 THAT THEIR MONEY WOULD BE SPENT ONE WAY, BUT, IN FACT, IT
01:50PM 6 ACTUALLY WENT TO SOMETHING ELSE, BUT THAT IS NOT THE MAIN
01:50PM 7 POINT.

01:50PM 8 THE MAIN POINT ON THIS ISSUE IT IS NOT A CASE ABOUT
01:50PM 9 MR. BALWANI TAKING THE INVESTOR MONEY AND BUYING A CAR OR A
01:50PM 10 HOUSE. THAT'S NOT WHAT THE CASE IS ABOUT. IT'S ABOUT FALSE
01:50PM 11 STATEMENTS COMMUNICATED TO INVESTORS FOR THE PURPOSE OF
01:50PM 12 DECEIVING THEM.

01:50PM 13 THE FIFTH DEFENSE ARGUMENT THAT YOU HEARD DURING THE
01:50PM 14 COURSE OF THE CASE THAT I WANT TO SPEND A MOMENT TALKING TO YOU
01:50PM 15 ABOUT IS LIS.

01:50PM 16 YOU HEARD THAT THERANOS BEGAN TESTING PATIENT BLOOD IN
01:50PM 17 SEPTEMBER OF 2013 IN WALGREENS STORES.

01:50PM 18 YOU HEARD THAT THERANOS HAD A DATABASE WHERE IT STORED
01:50PM 19 PATIENT TESTING INFORMATION.

01:50PM 20 YOU HEARD THAT AT SOME POINT IT HAD A PRIOR VERSION OF A
01:50PM 21 DATABASE AND THEN IT CREATED WHAT WAS CALLED A BESPOKE, A NOVEL
01:51PM 22 VERSION OF LIS, LAB INFORMATION SYSTEMS.

01:51PM 23 AND YOU HEARD THAT THAT DATABASE WAS CREATED USING
01:51PM 24 SOFTWARE MADE BY MICROSOFT CALLED SQL OR SPELLED SQL.

01:51PM 25 AND THE DEFENSE CALLED A WITNESS CALLED RICHARD SONNIER ON

01:51PM 1 THIS TOPIC. AND HE NEVER WORKED AT THERANOS, AND HE HAD NEVER
01:51PM 2 SEEN LIS, BUT HE TOLD YOU HE HAD PRIOR EXPERIENCE WORKING WITH
01:51PM 3 THIS MICROSOFT PRODUCT WITH SQL.

01:51PM 4 AND MR. SONNIER TOLD YOU THAT HE UNDERSTOOD THAT BEFORE
01:51PM 5 THE INVESTIGATION STAGE, BEFORE MR. BALWANI WAS CHARGED WITH
01:51PM 6 CRIMES, THE GOVERNMENT TRIED TO GET A COPY OF THE LIS FROM
01:51PM 7 THERANOS.

01:51PM 8 MR. SONNIER TOLD YOU THAT HE HEARD THE GOVERNMENT RECEIVED
01:51PM 9 A COPY, AND HE HEARD THE GOVERNMENT SHARED OR GAVE A COPY TO
01:51PM 10 MR. BALWANI.

01:51PM 11 MR. SONNIER TOLD YOU THAT HE HEARD OR UNDERSTOOD THAT THE
01:51PM 12 GOVERNMENT COULD NOT OPEN THE COPY OF LIS THAT IT RECEIVED.
01:52PM 13 AND HE ALSO TOLD YOU THAT HE COULD NOT OPEN THE VERSION THAT
01:52PM 14 BALWANI HAD, THE LIS VERSION THAT BALWANI HAD.

01:52PM 15 THEN YOU EVEN SAW OUR EMAILS, THE PROSECUTORS IN THIS CASE
01:52PM 16 EMAILS, OUR ATTEMPTS TO GET ADDITIONAL COPIES FROM THERANOS,
01:52PM 17 THAT WHEN THE GOVERNMENT COULD NOT OPEN THE LIS VERSION THAT IT
01:52PM 18 RECEIVED, THE GOVERNMENT WENT BACK TO THERANOS AND TRIED TO GET
01:52PM 19 ANOTHER COPY, A WORKABLE COPY, AND IT DIDN'T JUST STOP WITH
01:52PM 20 THERANOS.

01:52PM 21 YOU HEARD THAT AFTER THERANOS CEASED TO EXIST, A DIFFERENT
01:52PM 22 ENTITY INTERCEPTED ITS ASSETS, AND YOU SAW THE GOVERNMENT WENT
01:52PM 23 TO THAT ENTITY ALSO AND TRIED TO GET LIS.

01:52PM 24 AND FINALLY, THERE WAS NO LIS IN THE COURTROOM. YOU
01:52PM 25 DIDN'T SEE LIS.

01:52PM 1 NOW, FROM THIS I ANTICIPATE THE DEFENSE IS GOING TO TELL
01:52PM 2 YOU, YOU CANNOT CONVICT SUNNY BALWANI BECAUSE THE LIS IS NOT
01:52PM 3 HERE. AND THAT'S THE ARGUMENT I WANT TO RESPOND TO.

01:52PM 4 FIRST, LIS IS LIMITED TO THE PATIENT COUNTS. MR. BALWANI
01:53PM 5 IS CHARGED WITH DEFRAUDING INVESTORS WITH A WIDE VARIETY OF
01:53PM 6 FALSE STATEMENTS. WE TALKED ABOUT THOSE CATEGORIES, AND THOSE
01:53PM 7 CATEGORIES GO WELL BEYOND THE ACCURACY OF THERANOS'S BLOOD
01:53PM 8 TESTING, THE HEALTH OF THE WALGREENS RELATIONSHIP DOD WORK,
01:53PM 9 PHARMA VALIDATION. LIS IS NOT RELATED TO THE INVESTOR COUNTS.

01:53PM 10 BUT LET'S TALK ABOUT ITS RELATION TO THE PATIENT COUNTS.
01:53PM 11 MR. BALWANI WILL WANT YOU TO THINK THAT AT LEAST AS TO THE
01:53PM 12 PATIENT COUNTS, YOU CANNOT CONVICT MR. BALWANI OF THE PATIENT
01:53PM 13 COUNTS BECAUSE LIS IS NOT HERE IN THE COURTROOM. THAT ARGUMENT
01:53PM 14 IS MAKING AN ASSUMPTION. IT'S SPECULATING, IT'S ASKING YOU TO
01:53PM 15 ASSUME THAT THE EVIDENCE WITHIN LIS WOULD BE HELPFUL TO
01:53PM 16 MR. BALWANI, THAT THAT IS WHERE ALL OF THE EXCULPATORY
01:53PM 17 INFORMATION, ALL OF THE HELPFUL TO MR. BALWANI INFORMATION
01:53PM 18 REGARDING THERANOS BLOOD TESTING EXISTS.

01:54PM 19 PAUSE FOR A MOMENT AND JUST APPRECIATE THAT. ARE YOU
01:54PM 20 SURPRISED THAT COUNSEL IS TELLING YOU THAT A PIECE OF EVIDENCE,
01:54PM 21 ANY PIECE OF EVIDENCE THAT ISN'T HERE IN COURT IS THE KEY PIECE
01:54PM 22 OF EVIDENCE?

01:54PM 23 OF COURSE NOT.

01:54PM 24 BUT LET'S UNPACK EVEN THAT STATEMENT.

01:54PM 25 IF LIS WAS HERE, YOU KNOW IT COULDN'T GET ON THE STAND AND

01:54PM 1 TESTIFY TO YOU. YOU KNOW LIS WOULD NEED TO BE BROUGHT TO LIFE
01:54PM 2 THROUGH A WITNESS.

01:54PM 3 LET'S TALK FOR A MOMENT WHAT THAT WITNESS WOULD LOOK LIKE
01:54PM 4 IDEALLY. IDEALLY THE WITNESS WOULD BE A MEDICAL DOCTOR. THE
01:54PM 5 CASE IS ABOUT BLOOD TESTING, AND THE LIS CONTAINED MEDICAL
01:54PM 6 INFORMATION. SO IDEALLY THE WITNESS WOULD BE A MEDICAL DOCTOR,
01:54PM 7 BUT NOT JUST A MEDICAL DOCTOR, ONE WITH TRAINING IN PATHOLOGY,
01:54PM 8 SOMEONE WHO HAD PRIOR EXPERIENCE WITH LAB TESTING, BUT NOT JUST
01:54PM 9 A MEDICAL DOCTOR WITH TRAINING AND PATHOLOGY, MAYBE ONE WHO
01:54PM 10 WORKED AT THERANOS.

01:54PM 11 IF YOU'RE GOING TO BRING LIS TO LIFE ON THE STAND, YOU
01:54PM 12 WOULD WANT A PATHOLOGIST, TRAINED MEDICAL DOCTOR WHO WORKED AT
01:54PM 13 THERANOS, BUT MAYBE YOU WOULDN'T STOP THERE. MAYBE YOU WOULD
01:55PM 14 ALSO WANT THE MEDICALLY TRAINED PATHOLOGIST WHO WORKED AT
01:55PM 15 THERANOS WHO ALSO WORKED WITH LIS. THAT WOULD BE THE KIND OF
01:55PM 16 WITNESS WHO COULD PROVIDE YOU THE MOST INSIGHT INTO THE EFFECT
01:55PM 17 THAT LIS HAS ON THE ACCURACY OF BLOOD TESTING AT THERANOS.

01:55PM 18 WELL, YOU KNOW WHAT, THAT WITNESS DID TESTIFY IN THIS
01:55PM 19 TRIAL, AND HIS NAME IS DR. ROSENDORFF. DR. ROSENDORFF GOT ON
01:55PM 20 THE STAND WITH THAT EXPERIENCE AND TOLD YOU THAT AS PART OF HIS
01:55PM 21 WORK AT THERANOS, INFORMATION FROM LIS WAS PULLED, WAS GATHERED
01:55PM 22 FOR HIM, THAT HE REVIEWED THAT AS PART OF HIS WORK AT THERANOS.

01:55PM 23 AND DR. ROSENDORFF DIDN'T PAUSE OR HESITATE ABOUT THE
01:55PM 24 EFFECT THAT LIS HAD ON HIS CONCLUSIONS THAT THERANOS BLOOD
01:55PM 25 TESTING WAS NOT ACCURATE.

01:55PM 1 DR. ROSENDORFF WASN'T THE ONLY ONE, THOUGH. ERIKA CHEUNG
01:55PM 2 ALSO TESTIFIED AND TOLD YOU THAT AS PART OF HER JOB FROM TIME
01:55PM 3 TO TIME SHE INPUT INFORMATION INTO THE LIS. AND SHE ALSO TOLD
01:56PM 4 YOU THAT HER CONCERNS REGARDING THE ACCURACY OF THERANOS
01:56PM 5 TESTING WERE SO SEVERE THAT NOT ONLY DID SHE QUIT OVER THEM,
01:56PM 6 BUT SHE WENT TO THE MEDIA AND REGULATORS AFTER THAT BECAUSE OF
01:56PM 7 IT.

01:56PM 8 SO WHILE THE DEFENSE'S ARGUMENT REGARDING LIS ASKS YOU TO
01:56PM 9 SPECULATE WHAT LIS WOULD SAY AND HOW IT WOULD CONTAIN
01:56PM 10 EXCULPATORY INFORMATION, THE GOVERNMENT ISN'T ASKING YOU TO DO
01:56PM 11 THAT.

01:56PM 12 YOU HAVE HEARD FROM PEOPLE WHO HAVE HAD EXPOSURE TO THE
01:56PM 13 CONTENT OF LIS, AND THEY DIDN'T HESITATE OR PAUSE OR BALK AT
01:56PM 14 THESE CONCLUSIONS THAT THERANOS'S TESTING WAS INACCURATE AND
01:56PM 15 UNRELIABLE.

01:56PM 16 MR. SONNIER WAS NOT THE ONLY WITNESS THAT THEY CALLED.
01:56PM 17 THEY ALSO CALLED DR. WOOTEN. SHE DIDN'T TESTIFY THAT LONG AGO.
01:56PM 18 I DON'T HAVE A LOT TO SAY ABOUT DR. WOOTEN. YOU LEARNED ABOUT
01:56PM 19 HER TESTIMONY. AND THIS WASN'T THE FIRST TIME THAT THEY ASKED
01:57PM 20 HER TO SAY NICE THINGS AND POSITIVE THINGS ABOUT THERANOS.

01:57PM 21 YOU HEARD THAT AFTER THE NEGATIVE "WALL STREET JOURNAL"
01:57PM 22 ARTICLE IN 2015, THEY ASKED HER TO SIT FOR A VIDEO TO SAY
01:57PM 23 POSITIVE THINGS ABOUT THERANOS, BUT YOU LEARNED THAT THERE WAS
01:57PM 24 A LOT THAT SHE DIDN'T KNOW ABOUT THERANOS, A LOT THAT SHE
01:57PM 25 COULDN'T OR SHOULDN'T HAVE KNOWN, INTERNAL EMAILS AT THERANOS.

01:57PM 1 BUT WHAT SHE DID SAY, WHAT IS SURPRISING IS THAT EVEN THE
01:57PM 2 WITNESS THE DEFENSE CALLS WHO GETS ON THE STAND FOR THE PURPOSE
01:57PM 3 OF TELLING YOU THAT THERANOS TESTING WAS OKAY, TELLS YOU THAT
01:57PM 4 NOW KNOWING WHAT SHE NOW KNOWS, HAVING SEEN THE EVIDENCE THAT
01:57PM 5 SHE HAS SEEN, SHE, TOO, WOULD HAVE CONCERNS ABOUT SENDING HER
01:57PM 6 PATIENTS TO THERANOS AT LEAST AS TO SPECIFIC ASSAYS.

01:57PM 7 WHEN I FINISH, AND I TOLD YOU WHEN THE DEFENSE FINISHES,
01:57PM 8 THE GOVERNMENT GIVES THE FINAL REBUTTAL, AND THEN THE JUDGE
01:57PM 9 WILL READ YOU JURY INSTRUCTIONS.

01:57PM 10 AND IN THOSE INSTRUCTIONS, THE JUDGE WILL TALK TO YOU
01:57PM 11 ABOUT CONCEPTS THAT WE HAVE TALKED ABOUT, THINGS LIKE THE
01:58PM 12 ELEMENTS FOR WIRE FRAUD, AND THEN OTHER CONCEPTS LIKE WHAT IS
01:58PM 13 EVIDENCE. THE JUDGE WILL READ YOU INSTRUCTIONS BOTH ON AIDING
01:58PM 14 AND ABETTING AND ALSO A CONCEPT CALLED VICARIOUS LIABILITY OR
01:58PM 15 RESPONSIBILITY FOR THE STATEMENTS OF COCONSPIRATORS.

01:58PM 16 AND WHAT I WANT TO SAY ABOUT THESE IS THESE ARE
01:58PM 17 ALTERNATIVE THEORIES OF LIABILITY. THEY'RE WAYS THAT
01:58PM 18 MR. BALWANI CAN BE, IF THE GOVERNMENT MEETS THE ELEMENTS,
01:58PM 19 RESPONSIBLE FOR THE ACTIONS OF SOMEONE LIKE ELIZABETH HOLMES.
01:58PM 20 BUT THE GOVERNMENT DOESN'T HAVE TO PROVE ALL OF THEM. THERE
01:58PM 21 ARE SEVERAL DIFFERENT OF THESE ALTERNATIVE THEORIES OF
01:58PM 22 LIABILITY.

01:58PM 23 AND WHEN YOU HEAR THEM, YOU SHOULD THINK THAT THERE'S AN
01:58PM 24 "OR" BETWEEN THEM. THE GOVERNMENT DOESN'T HAVE TO PROVE ALL OF
01:58PM 25 THEM: VICARIOUS LIABILITY, AND AIDING AND ABETTING, AND

01:58PM 1 RESPONSIBILITY FOR COCONSPIRATOR STATEMENTS. THEY ARE, AS I
01:58PM 2 SAID, THEY'RE ALTERNATIVE THEORIES OF LIABILITY.

01:58PM 3 THE JUDGE WILL ALSO READ TO YOU AN INSTRUCTION ON THE
01:58PM 4 CONCEPT OF REASONABLE DOUBT, AND HE WILL TELL YOU THAT IT'S A
01:58PM 5 DOUBT BASED ON REASON AND COMMON SENSE, NOT A DOUBT BASED
01:59PM 6 PURELY ON SPECULATION. THAT INFORMS YOU THAT WHEN YOU GO BACK
01:59PM 7 TO DELIBERATE, YOU BRING YOUR REASON AND COMMON SENSE WITH YOU
01:59PM 8 AND YOU DON'T SPECULATE, LIKE I ARGUED TO YOU A MOMENT AGO,
01:59PM 9 THAT THE DEFENSE IS ASKING YOU TO DO WITH WHAT LIS WOULD SHOW.

01:59PM 10 THE STORY OF THERANOS REALLY IS A TRAGEDY. THE INVESTORS
01:59PM 11 WERE DEFRAUDED, AND THEY SHOULD NOT HAVE BEEN. THE PATIENTS
01:59PM 12 WERE DEFRAUDED, AND THEY, TOO, SHOULD NOT HAVE BEEN.

01:59PM 13 BUT THE STORY OF THERANOS IS NOT ONLY A TRAGEDY. IT IS
01:59PM 14 ALSO THE STORY OF SOME INDIVIDUALS ACTING WITH REMARKABLE
01:59PM 15 INTEGRITY.

01:59PM 16 YOU HEARD FROM INDIVIDUALS LIKE ERIKA CHEUNG WHO TOLD YOU
01:59PM 17 THAT THERANOS WAS HER FIRST JOB AFTER GRADUATING FROM CAL, AND
01:59PM 18 SHE DID SOMETHING VERY IMPORTANT WHEN SHE WAS THERE. SHE HAD
01:59PM 19 AN OPEN MIND. SHE WATCHED TO SEE WHAT THE TECHNOLOGY COULD DO,
01:59PM 20 WHETHER IT WAS TESTING ACCURATELY, OR WHETHER IT WASN'T.

01:59PM 21 AND WHEN SHE SAW THAT THERANOS WAS NOT TESTING ACCURATELY,
01:59PM 22 AND THEN REPORTING RESULTS TO PATIENTS, WHAT DID SHE DO? SHE
02:00PM 23 WENT DIRECTLY TO SUNNY BALWANI.

02:00PM 24 NOW, MR. BALWANI WANTS YOU TO THINK THAT HE'S A VICTIM.
02:00PM 25 THAT MR. BALWANI HAD OPTIONS, STOCK OPTIONS THAT HE NEVER

02:00PM 1 EXERCISED, SO HE LEFT MONEY ON THE TABLE, STOCK THAT HE NEVER
02:00PM 2 SOLD.

02:00PM 3 HE ALSO WANTS YOU TO THINK THAT HE WASN'T HIGH ENOUGH IN
02:00PM 4 THE ORG CHART TO HAVE MEANINGFUL COMMUNICATIONS WITH THIRD
02:00PM 5 PARTIES LIKE INVESTORS AND PATIENTS. THAT WAS THE CEO. THAT
02:00PM 6 WAS ELIZABETH HOLMES.

02:00PM 7 BUT HE WASN'T LOW ENOUGH IN THE ORG CHART TO KNOW WHAT WAS
02:00PM 8 HAPPENING INSIDE OF THE CLIA LAB. THAT WAS THE LAB DIRECTOR'S
02:00PM 9 RESPONSIBILITY. BUT YOU KNOW THE EVIDENCE. YOU KNOW THAT
02:00PM 10 ISN'T TRUE.

02:00PM 11 YOU KNOW THAT PEOPLE LIKE ERIKA CHEUNG WHO WENT DIRECTLY
02:00PM 12 TO MR. BALWANI AND EXPRESSED CONCERNS ABOUT THERANOS'S BLOOD
02:00PM 13 TESTING WERE MET FROM STATEMENTS FROM MR. BALWANI THAT WERE
02:00PM 14 TOLD NOT FROM THE PERSPECTIVE OF SOMEONE WHO IS A VICTIM, NOT
02:00PM 15 FROM THE PERSPECTIVE OF SOMEONE WHO IS SURPRISED AT WHAT HE WAS
02:01PM 16 HEARING.

02:01PM 17 WHAT HE TELLS ERIKA CHEUNG IS THAT HE QUESTIONS HER
02:01PM 18 EXPERIENCE, AND HE'S SICK OF PEOPLE WHO DON'T HAVE ENOUGH
02:01PM 19 EXPERIENCE QUESTIONING THERANOS'S BLOOD TESTING. AND HE TELLS
02:01PM 20 HER THAT SHE HAS ONE JOB AT THERANOS, AND THAT IS TO PROCESS
02:01PM 21 PATIENT SAMPLES AND NOT ASK ANY QUESTIONS.

02:01PM 22 IT'S NOT ONLY ERIKA CHEUNG, THOUGH.

02:01PM 23 DR. ROSENDORFF, WHEN DR. ROSENDORFF SEES PROBLEMS AT
02:01PM 24 THERANOS, HE BRINGS THEM DIRECTLY TO HOLMES AND BALWANI. IN
02:01PM 25 THIS INSTANCE, WHEN HE'S SAYING WE'RE GOING TO MISS CRITICAL

02:01PM 1 VALUES FOR THIS GROUP OF ASSAYS CALLED ISE'S, WHEN WE'RE
02:01PM 2 MISSING CRITICAL VALUES, HE'S ASKING HOLMES AND BALWANI IF
02:01PM 3 THEY'RE COMFORTABLE WITH THAT.

02:01PM 4 AND WHAT DOES MR. BALWANI RESPOND?

02:01PM 5 "WE NEED TO RESPOND TO HIM NOW AND CUT HIM MONDAY."

02:01PM 6 MR. BALWANI IS NOT A VICTIM. HE'S A PERPETRATOR OF THE
02:01PM 7 FRAUD BECAUSE MR. BALWANI KNOWS THAT THE BIGGEST THREAT TO
02:01PM 8 FRAUD IS THE TRUTH.

02:01PM 9 YOU'VE HEARD THIS DESCRIBED IN OTHER CONTEXTS AS THE
02:01PM 10 DISINFECTING POWER OF SUNLIGHT. WHEN YOU HAVE INTERNAL
02:02PM 11 EMPLOYEES LIKE CHEUNG, LIKE ROSENDORFF WHO COME FORWARD AND
02:02PM 12 COMMUNICATE DIRECTLY WITH MR. BALWANI AND SAY OUR TESTING IS
02:02PM 13 INACCURATE AND WE'RE GOING TO MISS VALUES WE'RE SHARING WITH
02:02PM 14 PATIENTS, THEY DON'T GET CONFRONTED WITH SURPRISE.

02:02PM 15 MR. BALWANI ISN'T RECEIVING BREAKING NEWS FROM THEM. HE'S
02:02PM 16 RECEIVING THREATS TO THE CONTINUATION OF THE FRAUD, AND THAT'S
02:02PM 17 WHY HE HAS TO SAY THINGS LIKE, "WE SHOULD CUT HIM MONDAY," WHEN
02:02PM 18 REFERRING TO ROSENDORFF.

02:02PM 19 AND FINALLY DR. PANDORI. HE ALSO HAD CONCERNS WITH
02:02PM 20 TESTING AT THERANOS. SO WHAT DID HE DO? HE WENT DIRECTLY TO
02:02PM 21 BALWANI AND SAID THEY SHOULD STOP ALL TESTING ON THE EDISON
02:02PM 22 DEVICES.

02:02PM 23 IF THIS WAS NEWS TO MR. BALWANI, HOW DO YOU THINK HE WOULD
02:02PM 24 REACT? AND COMPARE THAT TO HOW HE ACTUALLY DID REACT?

02:02PM 25 REMEMBER THIS STORY, DR. PANDORI TOLD YOU THAT WHEN HE

02:02PM 1 TOLD MR. BALWANI THAT THEY SHOULD STOP ALL TESTING ON THE
02:03PM 2 EDISON DEVICES, MR. BALWANI WENT AND GRABBED TWO COMPLETELY
02:03PM 3 UNRELATED INDIVIDUALS, TWO PROJECT MANAGERS, AND THEN WENT, THE
02:03PM 4 THREE OF THEM, TO DR. PANDORI'S OFFICE, AND IN DR. PANDORI'S
02:03PM 5 WORDS, "HE LET ME HAVE IT."

02:03PM 6 AGAIN, MR. BALWANI WASN'T SURPRISED BY THE INFORMATION
02:03PM 7 THAT HE WAS HEARING FROM ERIKA CHEUNG, OR ROSENDORFF OR
02:03PM 8 PANDORI. HE KNEW ALL OF THESE THINGS.

02:03PM 9 WHAT HE WAS BOTHERED BY, WHAT HE DID WORRY ABOUT WAS THIS
02:03PM 10 KIND OF INFORMATION OR THIS TRUTH GETTING OUT WAS THE BIGGEST
02:03PM 11 THREAT TO THE FRAUD.

02:03PM 12 AND THE ONE THING MR. BALWANI DIDN'T EXPECT WAS THAT HE
02:03PM 13 WOULD BE BEFORE YOU, OR A JURY LIKE YOU, ONE DAY WHERE YOU
02:03PM 14 WOULD HAVE THE ABILITY TO SEE HIS EMAILS, TO READ HIS TEXT
02:03PM 15 MESSAGES, TO PUT THE FULL STORY TOGETHER.

02:03PM 16 AND BECAUSE YOU'VE SEEN THAT NOW, BECAUSE YOU KNOW THE
02:03PM 17 EVIDENCE, YOU KNOW THERE IS ONE AND ONLY VERDICT THAT IS
02:03PM 18 SUPPORTED BY THE EVIDENCE AND THAT IS GUILTY ON ALL COUNTS.

02:03PM 19 THANK YOU.

02:03PM 20 THANK YOU, YOUR HONOR.

02:03PM 21 THE COURT: THANK YOU, MR. SCHENK.

02:04PM 22 WILL THE DEFENSE HAVE A CLOSING ARGUMENT?

02:04PM 23 MR. COOPERSMITH: YES, YOUR HONOR.

02:04PM 24 THE COURT: WHY DON'T WE TAKE 15 MINUTES. WE'LL
02:04PM 25 TAKE A 15 MINUTE BREAK, LADIES AND GENTLEMEN, AND THEN WE'LL

02:04PM 1 ENGAGE THE DEFENSE CLOSING.

02:04PM 2 (RECESS FROM 2:04 P.M. UNTIL 2:29 P.M.)

02:29PM 3 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

02:29PM 4 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

02:29PM 5 MR. COOPERSMITH, YOU HAVE AN ARGUMENT?

02:29PM 6 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:29PM 7 THE COURT: PLEASE PROCEED. THANK YOU.

02:29PM 8 MR. COOPERSMITH: MAY I REMOVE MY MASK?

02:29PM 9 THE COURT: YES. OF COURSE.

02:30PM 10 IT'S QUITE AN INTRODUCTION.

02:30PM 11 (LAUGHTER.)

02:30PM 12 MR. COOPERSMITH: CAN YOU HEAR ME NOW?

02:30PM 13 **(MR. COOPERSMITH GAVE HIS CLOSING ARGUMENT ON BEHALF OF**

02:30PM 14 **THE DEFENDANT.)**

02:30PM 15 MR. COOPERSMITH: MAY IT PLEASE THE COURT, LADIES

02:30PM 16 AND GENTLEMEN OF THE JURY, IT'S MY HONOR AND PRIVILEGE TO GIVE

02:30PM 17 THE CLOSING ARGUMENT ON BEHALF OF MR. BALWANI.

02:30PM 18 MR. BALWANI, AS YOU'VE SEEN THROUGH THE COURSE OF THIS

02:30PM 19 VERY LONG TRIAL, PUT HIS HEART AND SOUL INTO THERANOS. HE

02:30PM 20 WORKED TIRELESSLY YEAR AFTER YEAR TO MAKE THE COMPANY A

02:30PM 21 SUCCESS. HE DRANK FROM MULTIPLE, MULTIPLE FIREHOSES:

02:30PM 22 MANUFACTURING, SOFTWARE, LABORATORY OPERATIONS, BUSINESS

02:30PM 23 RELATIONSHIPS, INVESTORS, HIRING WORLD CLASS EMPLOYEES. THAT'S

02:30PM 24 HOW MR. BALWANI SPENT HIS TIME.

02:30PM 25 MR. BALWANI NOT ONLY WORKED FOR THERANOS, HE ALSO PUT HIS

02:30PM 1 MONEY WHERE HIS MOUTH WAS, AND HE INVESTED IN THERANOS.

02:30PM 2 FIRST OF ALL, HE INVESTED 4.5 -- OVER \$4.5 MILLION IN
02:31PM 3 THERANOS STOCK BY PURCHASING STOCK OF THE COMPANY AND GIVING
02:31PM 4 THAT MONEY TO THERANOS. HE DID THAT IN 2010 AND 2011.

02:31PM 5 IN ADDITION, MR. BALWANI, AS YOU'VE HEARD, GUARANTEED A
02:31PM 6 LOAN AT FIRST OF \$10 MILLION AND ULTIMATELY \$12 MILLION SO THAT
02:31PM 7 THERANOS COULD MAKE ITS PAYROLL, PROVIDE ITS EMPLOYEES WITH
02:31PM 8 HEALTH INSURANCE, AND CONTINUE TO BUILD A WORLD CLASS
02:31PM 9 DIAGNOSTIC TESTING COMPANY.

02:31PM 10 WELL, THE REASON WHY MR. BALWANI GUARANTEED THAT LOAN IS
02:31PM 11 NOT WHAT THE GOVERNMENT TOLD YOU. IT'S BECAUSE MR. BALWANI SAW
02:31PM 12 WHAT ELIZABETH HOLMES AND THERANOS HAD ACCOMPLISHED EVEN BEFORE
02:31PM 13 HE GOT THERE, AND I'LL TALK ABOUT THAT A LITTLE MORE IN A
02:31PM 14 MINUTE.

02:31PM 15 NOW, THERE'S NO EVIDENCE THAT EITHER ON HIS OWN OR IN
02:31PM 16 AGREEMENT WITH MS. HOLMES, THAT MR. BALWANI TRIED TO DECEIVE OR
02:31PM 17 CHEAT ANYBODY. NOT INVESTORS.

02:31PM 18 THE MONEY THAT INVESTORS GAVE THERANOS WAS ALL PUT INTO
02:32PM 19 THERANOS TO CONTINUE TO BUILD AND DEVELOP THERANOS'S
02:32PM 20 TECHNOLOGY, RELATIONSHIPS, AND WE'LL SEE THAT IN THE TREMENDOUS
02:32PM 21 R&D EXPENSE THAT INVESTORS WERE ACTUALLY INFORMED OF, AND WE'LL
02:32PM 22 SEE THE DOCUMENTS ON THAT.

02:32PM 23 AND MR. BALWANI DID NOT INTEND TO DECEIVE, CHEAT, OR
02:32PM 24 DEFRAUD PATIENTS. IN FACT, AS MS. SPIVEY SAID, THERANOS NEVER
02:32PM 25 EVEN ASKED WALGREENS FOR THE MONEY THAT PATIENTS WERE PAYING

02:32PM 1 FOR, PAYING FOR THEIR BLOOD TESTS. PATIENTS WERE PAYING
02:32PM 2 WALGREENS. THERANOS NEVER EVEN ASKED FOR THAT MONEY. THERE IS
02:32PM 3 NO INTENT TO DECEIVE, NO VIOLATION OF TRYING TO DEFRAUD
02:32PM 4 PATIENTS OUT OF THEIR \$35 OR \$40 THAT THEY WERE PAYING FOR
02:32PM 5 BLOOD TESTS.

02:32PM 6 WHAT THE EVIDENCE SHOWED IN THIS CASE WAS THAT AT ALL
02:32PM 7 TIMES MR. BALWANI ACTED IN GOOD FAITH TO MAKE BLOOD TESTING
02:33PM 8 MORE ACCESSIBLE, MORE CONVENIENT, AND MORE AFFORDABLE TO
02:33PM 9 EVERYONE.

02:33PM 10 ONE CRITICAL ASPECT OF MR. BALWANI'S GOOD FAITH IS HIS
02:33PM 11 UNWAVERING AND SINCERE BELIEF IN THE CAPABILITY OF THERANOS
02:33PM 12 TECHNOLOGY. HE BELIEVED AND HE HAD EVERY REASON TO BELIEVE IN
02:33PM 13 THE SCIENTIFIC TEAM, THE WORLD CLASS SCIENTIFIC TEAM AT
02:33PM 14 THERANOS AND THE TECHNOLOGY THEY DEVELOPED.

02:33PM 15 AND WHY IS THAT? FROM AN EARLY POINT IN HIS TIME AT
02:33PM 16 THERANOS HE SAW, BECAUSE HE WAS AT THE MEETING, THREE
02:33PM 17 JOHNS HOPKINS PHYSICIANS LOOKING AT THE THERANOS TECHNOLOGY AND
02:33PM 18 THE DATA AND GIVING THEIR OPINION. NO MAJOR WEAKNESSES WERE
02:33PM 19 FOUND. THE STRENGTH OF THE THERANOS TECHNOLOGY IS ACCURACY.
02:33PM 20 IT'S A MINILAB. THAT WASN'T MR. BALWANI'S OPINION, THOSE WERE
02:33PM 21 NOT HIS WORDS. THOSE WERE THE WORDS OF THE JOHNS HOPKINS TEAM
02:34PM 22 WHO EVALUATED THERANOS'S TECHNOLOGY.

02:34PM 23 WHY WOULD MR. BALWANI WANT TO INVEST IN A COMPANY LIKE
02:34PM 24 THAT AFTER SEEING THAT? I THINK THAT QUESTION ANSWERS ITSELF.
02:34PM 25 THE GOVERNMENT NEVER MENTIONED IT, BUT THERANOS IN

02:34PM 1 NOVEMBER OF 2014, AFTER MR. BALWANI WAS MADE AWARE OF A LOT OF
02:34PM 2 WORK THAT THERANOS DID, APPLIED FOR FDA APPROVAL.

02:34PM 3 NOW, THE GOVERNMENT MIGHT TELL YOU ON REBUTTAL, WELL, THAT
02:34PM 4 WAS APPROVAL FOR ONE PARTICULAR ASSAY, IT WAS THE HSV-1 ASSAY,
02:34PM 5 BUT THAT ASSAY WAS RUNNING ON THERANOS'S SYSTEM, WITH
02:34PM 6 THERANOS'S TECHNOLOGY, WITH THERANOS'S BLOOD TESTING ANALYZER,
02:34PM 7 AND WITH THERANOS'S CAPILLARY TUBE AND NANOTAINER, CTN.

02:34PM 8 AND WHEN THAT OCCURS AND THE FDA ULTIMATELY APPROVES IT
02:34PM 9 AFTER MANY MONTHS, IS THAT SOMETHING THAT MR. BALWANI SHOULD
02:34PM 10 TAKE AWAY AND SAY, WELL, THE TECHNOLOGY DOESN'T WORK?

02:35PM 11 THE OPPOSITE IS TRUE. THE TECHNOLOGY WORKED IN
02:35PM 12 MR. BALWANI'S EYES AND IN THE EYES OF THE FDA BECAUSE
02:35PM 13 MR. BALWANI WAS INFORMED OF THAT.

02:35PM 14 NOW, THERE'S MORE THAN THAT, OF COURSE. THE GOVERNMENT
02:35PM 15 DIDN'T MENTION THIS EITHER, BUT WALGREENS, FROM 2011 TO 2013,
02:35PM 16 THEY WEREN'T JUST TOLD, HEY, THERANOS HAS GREAT TECHNOLOGY.
02:35PM 17 WALGREENS WAS PROVIDED WITH AN EDISON DEVICE THAT THEY HAD IN
02:35PM 18 THEIR OWN OFFICE AND THAT THEY COULD USE BACK IN THEIR
02:35PM 19 HEADQUARTERS IN CHICAGO TO DO BLOOD TESTING. THEY ACTUALLY DID
02:35PM 20 BLOOD TESTING. THEY HAD THE DEVICE FOR TWO YEARS BEFORE THEY
02:35PM 21 DECIDED TO AGREE WITH THERANOS TO LAUNCH IN WALGREENS STORES.

02:35PM 22 AND THE GOVERNMENT DIDN'T MENTION THIS EITHER, BUT
02:35PM 23 MR. BALWANI PRESENTED -- THERANOS AND MR. BALWANI PRESENTED TO
02:35PM 24 CMS WHEN THERE WAS AN INSPECTION PAGES AND PAGES OF ASSAY --
02:36PM 25 I'M SORRY, ALTERNATIVE ASSESSMENT PROCEDURES WHERE THERANOS'S

02:36PM 1 TECHNOLOGY WAS RUN HEAD-TO-HEAD COMPARISONS WITH FDA APPROVED
02:36PM 2 DEVICES AND CAME OUT 100 PERCENT EVERY TIME OR NEARLY EVERY
02:36PM 3 TIME. THAT'S WHAT ACTUALLY HAPPENED.

02:36PM 4 THAT AAP TESTING AS WE'LL SEE, IT'S A FORM OF PROFICIENCY
02:36PM 5 TESTING, AND I'LL TALK ABOUT THAT SOME MORE. THAT'S WHERE THE
02:36PM 6 RUBBER HITS THE ROAD ON WHETHER THE TECHNOLOGY WORKS OR NOT.
02:36PM 7 IT'S THE HEAD-TO-HEAD COMPARISONS WITH THE FDA APPROVED
02:36PM 8 TECHNOLOGY. AND AS THE UNREBUTTED EVIDENCE SHOWS, IT CAME OUT
02:36PM 9 LOOKING VERY GOOD.

02:36PM 10 THAT'S JUST A FEW REASONS. AND WE'LL TALK ABOUT A LOT
02:36PM 11 MORE, ABOUT WHY MR. BALWANI BELIEVED IN THE TECHNOLOGY AS I GO
02:36PM 12 THROUGH MY CLOSING REMARKS.

02:36PM 13 NOW, THE GOVERNMENT SHOWED YOU TEXT MESSAGE AFTER TEXT
02:37PM 14 MESSAGE IN THIS CASE. THESE WERE PRIVATE TEXT MESSAGES BETWEEN
02:37PM 15 MR. BALWANI AND MS. HOLMES, WHO, AS YOU'VE HEARD, WERE BUSINESS
02:37PM 16 PARTNERS BUT ALSO IN A ROMANTIC RELATIONSHIP. SO NO ONE ELSE
02:37PM 17 WAS PRIVY TO THESE TEXT MESSAGES.

02:37PM 18 AND NOT A SINGLE TEXT MESSAGE, THERE'S NOT A SINGLE TEXT
02:37PM 19 MESSAGE WHERE MR. BALWANI TELLS ANYBODY TO DO THE WRONG THING
02:37PM 20 OR TELLS MS. HOLMES THAT HE'S IN AGREEMENT WITH HER TO COMMIT
02:37PM 21 FRAUD OR ANYTHING LIKE THAT.

02:37PM 22 IN FACT, AS WE'LL SEE AS I GO ON WITH MY REMARKS, THERE'S
02:37PM 23 TEXT MESSAGES WHERE MR. BALWANI WANTS TO MAKE SURE THAT
02:37PM 24 INFORMATION THAT IS BEING PROVIDED IS ACCURATE. AND THESE ARE
02:37PM 25 PRIVATE TEXT MESSAGES WHERE IF THERE WAS A CONSPIRACY, YOU

02:37PM 1 WOULD THINK THERE WOULD BE ALL KINDS OF CONSPIRATORIAL SINISTER
02:37PM 2 CONVERSATIONS, AND THERE JUST ISN'T.

02:37PM 3 THERE'S NOT A SINGLE EMAIL WHEN MR. BALWANI TELLS ANYBODY
02:37PM 4 TO DO THE WRONG THING OR TO RELEASE BLOOD TESTS THAT AREN'T
02:37PM 5 RIGHT.

02:37PM 6 IN FACT, EVERY TIME A PROBLEM AROSE, AND PROBLEMS DID
02:38PM 7 ARISE, MR. BALWANI WANTS THOSE PROBLEMS FIXED. HE WANTS HIS
02:38PM 8 SCIENTIFIC TEAM TO GET ON IT. AND IF THE SCIENTIFIC TEAM SAYS,
02:38PM 9 FOR EXAMPLE, IN THE CASE OF HCG TESTING, STOP, IT DOES STOP
02:38PM 10 UNTIL A PROPER STUDY IS DONE AND THE LAB DIRECTOR, IN THAT CASE
02:38PM 11 DR. ROSENDORFF, AGREES THAT THE TESTING ON THE EDISON CAN
02:38PM 12 CONTINUE, AND THAT IS WHAT HAPPENED.

02:38PM 13 NOW, THE GOVERNMENT OVER THESE MANY WEEKS OF TRIAL, HAS
02:38PM 14 PRESENTED YOU WITH EVIDENCE THAT MISTAKES WERE MADE IN RUNNING
02:38PM 15 THE LAB, THAT REGULATORY VIOLATIONS OCCURRED, AND THAT A
02:38PM 16 HANDFUL OF PATIENTS GOT ERRONEOUS LAB RESULTS, AND THAT A GROUP
02:38PM 17 OF RICH AND POWERFUL INVESTORS LOST MONEY BECAUSE THEY BET ON A
02:38PM 18 RISKY STARTUP THAT WAS GOING TO BE POWERED BY THE WALGREENS
02:38PM 19 ROLLOUT.

02:38PM 20 THOSE INVESTORS STOOD TO GET VERY RICH INDEED IF THE
02:38PM 21 WALGREENS ROLLOUT HAD WORKED OUT, AS WOULD ANYONE WHO HAD
02:38PM 22 SHARES IN THERANOS.

02:39PM 23 BUT WHAT THE GOVERNMENT HASN'T SHOWED YOU IS THAT
02:39PM 24 MR. BALWANI TRIED TO DECEIVE OR CHEAT ANYBODY. AND AT THE END
02:39PM 25 OF OUR REMARKS, I'LL TALK TO YOU MORE ABOUT THIS.

02:39PM 1 THE ONLY VERDICT IN THIS CASE THAT IS SUPPORTED BY THE
02:39PM 2 EVIDENCE OR THE LACK OF EVIDENCE IS GOING TO BE NOT GUILTY ON
02:39PM 3 EVERY SINGLE COUNT, ALL 12 COUNTS.

02:39PM 4 BUT LET'S NOW TALK ABOUT ELIZABETH HOLMES FOR A MINUTE.
02:39PM 5 OBVIOUSLY SHE LOOMS LARGE IN THIS CASE BECAUSE SHE WAS THE CEO
02:39PM 6 OF THERANOS.

02:39PM 7 WITNESS AFTER WITNESS TESTIFIED THAT MS. HOLMES WAS
02:39PM 8 BRILLIANT AND CHARISMATIC. AND SHE HAD TO BE BRILLIANT AND
02:39PM 9 CHARISMATIC BECAUSE THINK ABOUT WHAT SHE ACCOMPLISHED EVEN
02:39PM 10 BEFORE MR. BALWANI GOT TO THERANOS. SHE ATTRACTED INVESTORS
02:39PM 11 LIKE LARRY ELLISON, THE FOUNDER OF ORACLE HERE IN
02:39PM 12 SILICON VALLEY; AND A LEGENDARY SILICON VALLEY INVESTOR NAMED
02:39PM 13 DON LUCAS WAS ON THE BOARD BEFORE MR. BALWANI GOT THERE. SHE
02:39PM 14 ALSO ATTRACTED TO HER BOARD A PROFESSOR AND DEAN OF CHEMICAL
02:40PM 15 ENGINEERING AT STANFORD NAMED CHANNING ROBERTSON.

02:40PM 16 AND AS YOU'VE HEARD DURING THE COURSE OF THE TRIAL,
02:40PM 17 DR. ROBERTSON, PROFESSOR ROBERTSON TOLD INVESTORS THAT IN HIS
02:40PM 18 VIEW THE TECHNOLOGY WORKED. THAT'S WHAT DR. ROBERTSON INFORMED
02:40PM 19 INVESTORS.

02:40PM 20 AND MR. BALWANI KNEW PROFESSOR ROBERTSON WAS ON THE BOARD
02:40PM 21 OF THERANOS EVEN BEFORE HE GOT THERE, AND HE WAS A STANFORD
02:40PM 22 CHEMICAL ENGINEERING PROFESSOR.

02:40PM 23 LATER, MS. HOLMES ATTRACTED OTHER GIANTS OF INDUSTRY AND
02:40PM 24 GOVERNMENT WHO JOINED THERANOS. THE FORMER HEAD OF THE CENTERS
02:40PM 25 OF DISEASE CONTROL, WILLIAM FOEGE, WAS ON THE BOARD; FORMER

02:40PM 1 SENATE MAJORITY LEADER AND HEART SURGEON, BILL FRIST, WAS ON
02:40PM 2 THE BOARD; THE FORMER CHIEF EXECUTIVE OFFICER OF WELLS FARGO
02:40PM 3 BANK, RICHARD KOVACEVICH; FORMER U.S. SENATOR SAM NUNN; FORMER
02:40PM 4 MARINE CORPS GENERAL JAMES MATTIS, AND MANY OTHERS.

02:40PM 5 THESE ARE SOME OF THE MOST POWERFUL, SOPHISTICATED PEOPLE
02:40PM 6 IN THE COUNTRY. IN ADDITION, SOME OF THE MOST POWERFUL AND
02:41PM 7 SOPHISTICATED AND WEALTHY PEOPLE IN THE COUNTRY INVESTED IN
02:41PM 8 THERANOS.

02:41PM 9 MR. BALWANI WOULD HAVE SEEN THE SAME THING IN
02:41PM 10 ELIZABETH HOLMES THAT THOSE PEOPLE SAW. AND YOU WONDER WHY HE
02:41PM 11 WAS ATTRACTED TO THERANOS? WHY HE WAS ATTRACTED TO MS. HOLMES?
02:41PM 12 WHY HE WOULD WANT TO PUT HIS MONEY WHERE HIS MOUTH IS AND
02:41PM 13 INVEST IN THERANOS AND GUARANTEE A LOAN?

02:41PM 14 WELL, ALL OF THESE OTHER PEOPLE DID THE SAME THING BEFORE
02:41PM 15 MR. BALWANI JOINED THE COMPANY.

02:41PM 16 NOW, YOU'VE SEEN A LOT OF EMAILS AND TEXT MESSAGES IN THIS
02:41PM 17 CASE, BUT I WANT TO TALK ABOUT WHAT THE GOVERNMENT DIDN'T SHOW
02:41PM 18 YOU AND WHAT THE DEFENSE HAD TO SHOW YOU.

02:41PM 19 SO LET'S THINK ABOUT SOMEONE'S LIFE OR CAREER. LET'S TAKE
02:41PM 20 A TEN-YEAR SECTION OF SOMEONE'S CAREER, AND LET'S SAY YOU
02:41PM 21 GATHERED EVERY SINGLE TEXT MESSAGE AND EVERY SINGLE EMAIL THAT
02:41PM 22 THAT PERSON EVER SENT OR RECEIVED, AND YOU SIFTED IT AND SORTED
02:41PM 23 IT UNTIL WHAT YOU WERE LEFT WITH WAS ONLY THE TEXT MESSAGES OR
02:42PM 24 EMAILS WHERE A PROBLEM WAS IDENTIFIED, BUT YOU NEVER ADD IN,
02:42PM 25 WELL, HOW WAS THE PROBLEM RESOLVED? JUST A PROBLEM WAS

02:42PM 1 IDENTIFIED.

02:42PM 2 OR YOU ALSO ADD INTO THOSE -- THAT VERY SELECTIVE SET
02:42PM 3 TIMES AT 3:00 IN THE MORNING WHEN THE PERSON IS FRUSTRATED OR
02:42PM 4 HE'S VENTING ABOUT SOMETHING. AND THOSE ARE THE ONLY TEXT
02:42PM 5 MESSAGES THAT YOU GATHERED, AND YOU PRESENTED THAT AND SAID,
02:42PM 6 WELL, THIS IS THE SUM TOTAL OF THIS PERSON'S TEN-YEAR CAREER.

02:42PM 7 WOULD THAT BE A FAIR PICTURE OF WHAT ACTUALLY HAPPENED?
02:42PM 8 WOULD THAT BE AN ACCURATE PICTURE?

02:42PM 9 THAT'S WHAT THE GOVERNMENT TRIED TO DO HERE.

02:42PM 10 NOW, MR. BALWANI, AS JUDGE DAVILA WILL TELL YOU, HE'S
02:42PM 11 PRESUMED INNOCENT. HE HAS NO BURDEN OF PROOF. HE DOESN'T HAVE
02:42PM 12 TO PUT ON ANY EVIDENCE. HE DOESN'T EVEN HAVE TO PUT IN A
02:42PM 13 SINGLE EMAIL AS AN EXHIBIT. HE CERTAINLY DOESN'T HAVE TO
02:42PM 14 TESTIFY AS JUDGE DAVILA WILL ALSO INSTRUCT YOU.

02:42PM 15 BUT THANK GOODNESS, WE THE DEFENSE, DID PUT IN EVIDENCE
02:42PM 16 BECAUSE WITHOUT THAT, YOU WOULD BE LEFT WITH THE GOVERNMENT'S
02:43PM 17 HIGHLY MISLEADING PICTURE OF WHAT OCCURRED HERE.

02:43PM 18 OVER AND OVER AGAIN THE GOVERNMENT DECIDED NOT TO SHOW YOU
02:43PM 19 THE WHOLE STORY BECAUSE IT WAS INCONSISTENT WITH THE STORY,
02:43PM 20 WITH THE NARRATIVE THAT THEY WANT TO TELL.

02:43PM 21 WE'LL TALK IN DETAIL ABOUT THE MANY TIMES THAT THIS
02:43PM 22 HAPPENED, BUT LET ME MENTION A FEW OF THEM NOW.

02:43PM 23 BRYAN TOLBERT, ONE OF THE INVESTORS -- ACTUALLY, THE
02:43PM 24 INVESTOR WAS THE HALL GROUP. WE DIDN'T HEAR FROM CRAIG HALL,
02:43PM 25 BUT MR. TOLBERT CAME IN REPRESENTING THE HALL GROUP. AND HE

02:43PM 1 WAS ASKED A QUESTION ABOUT WHAT MS. HOLMES TOLD HIM IN A
02:43PM 2 PARTICULAR CONVERSATION ON DECEMBER 20TH OF 2013, BEFORE HE
02:43PM 3 INVESTED.

02:43PM 4 AND WE KNOW THAT CHRIS LUCAS, ANOTHER INVESTOR, WAS ALSO
02:43PM 5 ON THAT CALL.

02:43PM 6 AND MR. TOLBERT TESTIFIED THAT ACTUALLY THERE WAS A TAPE
02:43PM 7 RECORDING OF THAT CALL THAT HE HAD WITH MS. HOLMES. AND THAT
02:43PM 8 WAS OUR CHANCE TO SEE EXACTLY, PRECISELY WHAT MS. HOLMES SAID
02:43PM 9 TO THOSE INVESTORS. AND WE DID NOT HEAR THE TAPE.

02:44PM 10 WE LEARNED THAT THE GOVERNMENT HAD THE TAPE, THAT
02:44PM 11 MR. TOLBERT PRODUCED IT TO THE GOVERNMENT, THAT HE REVIEWED IT
02:44PM 12 WITH THEM, BUT WE DIDN'T HEAR IT. AND YOU HAVE TO WONDER WHY
02:44PM 13 NOT? WHY DIDN'T THE GOVERNMENT WANT YOU TO HEAR EXACTLY WHAT
02:44PM 14 ELIZABETH HOLMES SAID IN A SUPPOSEDLY FRAUDULENT INTERACTION
02:44PM 15 WITH THESE INVESTORS?

02:44PM 16 IN ADDITION, THE GOVERNMENT DIDN'T SHOW YOU DOZENS, DOZENS
02:44PM 17 OF EMAILS WE HAD TO OFFER THROUGH CROSS-EXAMINATION. FOR
02:44PM 18 EXAMPLE, SOME OF THOSE EMAILS DIRECTLY CONTRADICTED
02:44PM 19 ADAM ROSENDORFF, WHO THE GOVERNMENT TALKED A LOT ABOUT DURING
02:44PM 20 THEIR CLOSING REMARKS.

02:44PM 21 FOR EXAMPLE, ON HCG, THEY SHOWED YOU THAT DR. ROSENDORFF
02:44PM 22 SAID ON A PARTICULAR DAY, MAY 30TH, 2014, STOP HCG TESTING ON
02:44PM 23 EDISON.

02:44PM 24 THEN WHAT THEY DIDN'T SHOW YOU IS A FEW DAYS LATER,
02:44PM 25 DR. ROSENDORFF WAS INFORMED THAT THERE WAS A STUDY THAT WAS

02:44PM 1 DONE, AND HE WAS INFORMED THAT THEY WERE READY TO RELEASE
02:45PM 2 RESULTS. AND THEY DIDN'T SHOW YOU THAT DR. ROSENDORFF ACTUALLY
02:45PM 3 SENT AN EMAIL APPROVING THE RELEASE OF THE RESULTS JUST A FEW
02:45PM 4 DAYS AFTER HE SAID TO STOP.

02:45PM 5 WE HAD TO SHOW YOU THAT DOCUMENT. AND THE GOVERNMENT
02:45PM 6 DIDN'T WANT YOU TO HEAR THAT, DIDN'T WANT TO PRODUCE THAT
02:45PM 7 BECAUSE IT SHOWED WHAT REALLY HAPPENED, NOT THE GOVERNMENT'S
02:45PM 8 NARRATIVE OF WHAT HAPPENED.

02:45PM 9 IN ADDITION, AS YOU'LL SEE, YOU'VE HEARD THE NAME
02:45PM 10 DR. DANIEL YOUNG MANY TIMES IN THIS CASE. HE WAS BASICALLY THE
02:45PM 11 CHIEF SCIENTIST DURING THE TIME WHEN THERANOS WAS LAUNCHING
02:45PM 12 THEIR WALGREENS BLOOD TESTING. IN ADDITION, HE WAS THE ARIZONA
02:45PM 13 LAB DIRECTOR.

02:45PM 14 THERE ARE ABOUT 78 EMAILS THAT WERE INTRODUCED INTO
02:45PM 15 EVIDENCE IN THIS CASE WHERE DR. YOUNG IS ON THE EMAILS. WHY
02:45PM 16 DIDN'T WE HEAR FROM DR. ROSENDORFF? I'M SORRY, DR. YOUNG?
02:45PM 17 WHERE IS DR. YOUNG?

02:45PM 18 SAME GOES FOR LAGLY GEE, THE QUALITY CONTROL MANAGER THAT
02:45PM 19 WAS HIRED WITH THE HELP OF DR. ROSENDORFF. WE HEARD A LOT
02:46PM 20 ABOUT QUALITY CONTROL. WHY DIDN'T WE HEAR ABOUT THE PERSON WHO
02:46PM 21 WAS RESPONSIBLE FOR QUALITY CONTROL? WHY DIDN'T THE GOVERNMENT
02:46PM 22 WANT YOU TO HEAR THAT WITNESS?

02:46PM 23 ALSO BOARD MEMBERS. AS YOU SEE AS I GO THROUGH THIS,
02:46PM 24 BOARD MEMBERS WERE INVOLVED IN RUNNING THE BUSINESS. THAT WAS
02:46PM 25 THEIR JOB, AND WE DIDN'T HEAR FROM A SINGLE BOARD MEMBER. AND

02:46PM 1 WE'LL TALK MORE ABOUT WHAT THE BOARD MEMBERS KNEW AND WHAT
02:46PM 2 INFORMATION THEY HAD.

02:46PM 3 AND THEN, OF COURSE, AS MR. SCHENK SAID IN THE TAIL END OF
02:46PM 4 HIS CLOSING REMARKS, THE GOVERNMENT DIDN'T FOLLOW THEIR OWN
02:46PM 5 ADVICE FROM THEIR OWN EMPLOYEE, GO GET THE SERVERS THAT
02:46PM 6 CONTAINED THE LABORATORY INFORMATION SYSTEM. WHEN THEY GOT A
02:46PM 7 COPY OF THAT SYSTEM FROM THERANOS, THEY COULDN'T OPEN, BUT THEY
02:46PM 8 WERE TOLD, INTERNALLY THEY WERE INFORMED GO GET THE SERVERS.
02:46PM 9 AND THEY HAD A MEETING, AND THEY DECIDED NOT TO DO IT.

02:46PM 10 SO AS A RESULT, YOU DON'T HAVE THE LABORATORY INFORMATION
02:46PM 11 SYSTEM EVIDENCE. AND AS YOU'LL HEAR WHEN I GO THROUGH SOME OF
02:47PM 12 THE TESTIMONY, DR. ROSENDORFF HIMSELF TESTIFIED THAT THAT WAS A
02:47PM 13 TOOL THAT HE USED TO ASSESS THE TESTING WHEN THERE WAS AN
02:47PM 14 INQUIRY OR EVEN A COMPLAINT, AND THAT DR. ROSENDORFF'S WORDS,
02:47PM 15 THAT'S WHAT HE USED TO CONDUCT AN INVESTIGATION WHEN THAT SORT
02:47PM 16 OF THING HAPPENED.

02:47PM 17 DOESN'T THE GOVERNMENT HAVE TO ABIDE BY THE SAME RULES
02:47PM 18 HERE IF THEY'RE GOING TO PRESENT TO YOU A CASE OF SCIENTIFIC
02:47PM 19 FRAUD? DON'T THEY HAVE TO DO THE SAME THING THAT
02:47PM 20 DR. ROSENDORFF WOULD DO AT THE LEAST, TO LOOK AT ACCURACY OF
02:47PM 21 TESTING? NOT ON ONE TEST. ANY TEST THAT A PATIENT GETS THAT
02:47PM 22 IS NOT ACCURATE IS EXTREMELY UNFORTUNATE, AND NOBODY WANTS
02:47PM 23 THAT, LEAST OF ALL MR. BALWANI.

02:47PM 24 BUT THIS CASE IS ABOUT SYSTEMIC WIDESPREAD TESTING
02:47PM 25 FAILURES, NOT A PATIENT GOT AN INACCURATE RESULT ON AN OCCASION

02:47PM 1 HERE AND THERE.

02:47PM 2 AND AS YOU HEARD FROM WITNESS AFTER WITNESS, ALL LABS MAKE

02:48PM 3 ERRORS. THAT'S A FACT OF LIFE. ALL HUMAN ENDEAVORS MAKE

02:48PM 4 ERRORS. NOBODY WANTS THAT. EVERYONE STRIVES FOR PERFECTION.

02:48PM 5 IT JUST DOESN'T HAPPEN.

02:48PM 6 HERE, THE GOVERNMENT'S BURDEN IS TO SHOW THIS IS A

02:48PM 7 WIDESPREAD FAILURE, AND WE WILL TALK ABOUT THIS MORE, BUT YOU

02:48PM 8 JUST CAN'T DO THAT WITHOUT THE CENTRAL DATABASE THAT CONTAINS

02:48PM 9 ALL OF THE PATIENT'S TESTING, ALL OF THE QUALITY CONTROL

02:48PM 10 INFORMATION FOR EVERY THERANOS PATIENT TEST.

02:48PM 11 AS I GO ON WITH MY CLOSING REMARKS, AND WHEN YOU HEAR THE

02:48PM 12 GOVERNMENT IN REBUTTAL, YOU SHOULD KEEP IN MIND ALL OF THE

02:48PM 13 EVIDENCE THAT THE GOVERNMENT DIDN'T SHOW AND ASK YOURSELF WHY

02:48PM 14 THESE WITNESSES DIDN'T TESTIFY? WHY DID THEY HAVE TO TESTIFY

02:48PM 15 FROM MEMORY ABOUT EVENTS SEVEN, EIGHT, NINE YEARS AGO WHEN

02:48PM 16 THERE WERE DOCUMENTS, WHEN THERE WAS A TAPE IN THE CASE OF

02:48PM 17 MR. TOLBERT AND MR. LUCAS.

02:48PM 18 ANOTHER THING JUST AS AN OVERALL CONCEPT I THINK THAT IS

02:49PM 19 IMPORTANT HERE IS YOU REALLY HAVE TO LOOK AT THE FACTS IN THIS

02:49PM 20 CASE AS MR. BALWANI WOULD HAVE BEEN EXPERIENCING THEM IN REAL

02:49PM 21 TIME.

02:49PM 22 WITH THE BENEFIT OF HINDSIGHT YOU MIGHT CONCLUDE, WELL,

02:49PM 23 MR. BALWANI COULD HAVE MADE A DIFFERENT JUDGMENT ON ONE POINT

02:49PM 24 OR ANOTHER.

02:49PM 25 BUT THE ISSUE HERE AND TO ASSESS HIS INTENT AND GOOD

02:49PM 1 FAITH, YOU HAVE TO LOOK AT THE EVIDENCE AS IT'S UNFOLDING IN
02:49PM 2 REAL TIME AS HE WOULD HAVE SEEN IT IN HIS OWN EYES, NOT WITH
02:49PM 3 THE BENEFIT OF HINDSIGHT.

02:49PM 4 AND THE GOVERNMENT IN THEIR CLOSING, THERE WAS A LOT OF
02:49PM 5 PLAYING AROUND WITH THE TIMELINE WHERE THINGS WEREN'T EXACTLY
02:49PM 6 IN CHRONOLOGICAL ORDER, AND THEY'RE TRYING TO SAY, WELL, HE HAD
02:49PM 7 CERTAIN KNOWLEDGE WHEN ACTUALLY THAT CAME MUCH LATER.

02:49PM 8 FOR EXAMPLE, THEY SHOWED YOU A PARTICULAR DOCUMENT WHERE
02:49PM 9 HE AND A PROJECT MANAGER NAMED MAX FOSQUE WERE GOING OVER -- OR
02:49PM 10 THERE WAS A SPREADSHEET THAT WAS COMPILED BY MR. FOSQUE AND IT
02:49PM 11 HAD SOME PATIENT COMPLAINTS.

02:49PM 12 AND THE GOVERNMENT ARGUED, WELL, MR. BALWANI KNEW IN REAL
02:50PM 13 TIME THAT THESE COMPLAINTS WERE COMING IN. WELL, THERE WAS NO
02:50PM 14 EVIDENCE OF THAT. THIS WAS A SPREADSHEET THAT WAS COMPILED IN
02:50PM 15 SEPTEMBER OF 2015 IN ADVANCE OF THE CMS INSPECTION THAT MONTH.
02:50PM 16 THAT DOESN'T SHOW THAT MR. BALWANI HAD THAT KNOWLEDGE IN 2013
02:50PM 17 OR 2014, OR EVEN IN 2015 BEFORE THE SPREADSHEET WAS COMPILED.

02:50PM 18 SO THERE'S A LOT OF PLAYING AROUND WITH THE TIMELINE, BUT
02:50PM 19 I THINK IT'S GOING TO BE IMPORTANT TO KEEP IN MIND THAT WE HAVE
02:50PM 20 TO LOOK AT THINGS AS MR. BALWANI SAW THEM WITH HIS OWN EYES,
02:50PM 21 NOT WITH THE BENEFIT OF HINDSIGHT.

02:50PM 22 LET ME GIVE YOU AN ANALOGY ABOUT THAT. SO SOME PEOPLE ARE
02:50PM 23 INTO SPORTS, BUT YOU MAY KNOW THAT WHEN SPORTS TEAMS ARE TRYING
02:50PM 24 TO IMPROVE, THEY'LL OFTEN WATCH A VIDEOTAPE OF THE SPORTS
02:50PM 25 EVENT. AND THEN WHEN YOU WATCH THE VIDEOTAPE YOU MIGHT FIND,

02:50PM 1 WELL, THAT -- THERE SHOULD HAVE BEEN A PASS TO THE GUY ON THE
02:50PM 2 WING BECAUSE HE WAS REALLY OPEN, OR SOME OTHER PLAY SHOULD HAVE
02:50PM 3 BEEN MADE, EVEN THOUGH THE PLAYERS AT THE TIME WERE TRYING TO
02:51PM 4 DO THEIR BEST TO MAKE THE RIGHT PASS, TO MAKE THE RIGHT THROW,
02:51PM 5 THEY WERE DOING THAT IN GOOD FAITH, THEY WERE TRYING THEIR
02:51PM 6 BEST.

02:51PM 7 BUT, YOU KNOW, WHEN YOU LOOK AT THE VIDEO YOU FIND, WELL,
02:51PM 8 I SEE SOMETHING IN HINDSIGHT WITH THE USE OF THE VIDEO THAT,
02:51PM 9 YOU KNOW, IT WOULD HAVE BEEN NICE IF THE PLAYERS HAD SEEN IT AT
02:51PM 10 THE TIME. THAT'S KIND HINDSIGHT, AND THAT WORKS WELL FOR
02:51PM 11 SPORTS TEAMS BECAUSE IT HELPS THEM IMPROVE AND MAYBE MAKE A
02:51PM 12 BETTER PASS THE NEXT TIME. YOU KNOW, HINDSIGHT IS A VALUABLE
02:51PM 13 TOOL FOR JUDGING PEOPLE.

02:51PM 14 BUT HERE'S THE KICKER. IMAGINE TRYING TO DO THAT
02:51PM 15 VIDEOTAPE REVIEW OF A SPORTS GAME OR A WHOLE SEASON OR THREE
02:51PM 16 SEASONS FOR THAT MATTER, BUT YOU'RE DOING THAT WHEN THE VIDEO
02:51PM 17 IS NOT EVEN AVAILABLE ANYMORE BECAUSE THE PEOPLE RESPONSIBLE
02:51PM 18 FOR GETTING IT NEVER BOTHERED GETTING THE HARD DRIVES WHERE THE
02:51PM 19 VIDEO WAS STORED, AND NOW WE'RE TRYING TO DO THIS ALL FROM
02:51PM 20 MEMORY. WOULD THAT BE A FAIR WAY TO CRITICIZE THE PLAYERS?

02:51PM 21 THIS IS NOT A GAME, OF COURSE. THIS IS THE FEDERAL
02:51PM 22 GOVERNMENT USING ALL OF ITS POWER TO PROSECUTE MR. BALWANI FOR
02:51PM 23 CRIMES HE DIDN'T COMMIT AND DID NOT INTEND TO COMMIT AND TRYING
02:52PM 24 TO OBTAIN A CONVICTION WITHOUT SHOWING YOU ALL OF THE FACTS.

02:52PM 25 NOW, THE GOVERNMENT'S BURDEN IS TO PROVE BEYOND A

02:52PM 1 REASONABLE DOUBT, AMONG OTHER THINGS, THAT MR. BALWANI INTENDED
02:52PM 2 AT THE TIME TO DECEIVE AND CHEAT PEOPLE TO GET THEIR MONEY, AND
02:52PM 3 THE GOVERNMENT HAS FAILED.

02:52PM 4 WELL, THIS HAS BEEN A VERY LONG TRIAL. THERE'S BEEN A LOT
02:52PM 5 OF EXHIBITS, A LOT OF TESTIMONY, A LOT OF DELAY UNFORTUNATELY.
02:52PM 6 IT'S MY OBLIGATION TO TRY TO WALK YOU THROUGH THE EVIDENCE AS
02:52PM 7 BEST I CAN SO THAT WHEN YOU DELIBERATE, YOU'LL HAVE ALL OF THE
02:52PM 8 FACTS IN MIND, NOT JUST THE NARROW STORY THAT THE GOVERNMENT IS
02:52PM 9 TRYING TO TELL YOU.

02:52PM 10 NOW, YOU'VE BEEN THROUGHOUT THIS TRIAL EXTREMELY PATIENT,
02:52PM 11 EXTREMELY ATTENTIVE, AND I CAN ONLY ASK THAT YOU CONTINUE TO DO
02:52PM 12 THAT DURING MY CLOSING REMARKS.

02:52PM 13 I JUST WANT TO TELL YOU UPFRONT, MY REMARKS WILL BE
02:52PM 14 LENGTHY, NOT BECAUSE I WANT TO KEEP YOU EVEN ONE MINUTE LONGER
02:53PM 15 THAN I HAVE TO, BUT JUST BECAUSE THERE'S A LOT OF EVIDENCE IN
02:53PM 16 THIS CASE. AND THIS IS OBVIOUSLY AN EXTREMELY IMPORTANT
02:53PM 17 MATTER. AND SO I'LL TRY TO GIVE YOU SIGN POSTS AND ROAD MAPS
02:53PM 18 OF WHERE WE ARE, BUT IT IS GOING TO BE LENGTHY, AND IT WILL
02:53PM 19 SPILL OVER INTO TOMORROW. I HOPE NOT LONGER THAN THAT, BUT
02:53PM 20 WE'LL SEE.

02:53PM 21 SO THANK YOU. AND MR. BALWANI THANKS YOU IN ADVANCE FOR
02:53PM 22 YOUR ATTENTIVENESS AND YOUR PARTICIPATION IN THIS REALLY
02:53PM 23 IMPORTANT PROCESS.

02:53PM 24 OKAY. LET'S SORT OF GET TO THE CORE AND THE SUBSTANCE OF
02:53PM 25 THIS.

02:53PM 1 SO, MR. ALLEN, IF YOU COULD GO TO SLIDE 2.

02:53PM 2 THIS IS THE ROAD MAP OF WHAT I'M GOING TO BE TALKING ABOUT
02:53PM 3 DURING MY CLOSING ARGUMENT. SO I WANT TO TALK ABOUT
02:53PM 4 MR. BALWANI AND HIS BACKGROUND AND HIS INTRODUCTION TO
02:53PM 5 THERANOS; I'M GOING TO TALK ABOUT THERANOS'S BUSINESS AND
02:53PM 6 TECHNOLOGY; I'M GOING TO TALK ABOUT THERANOS'S SCIENTIFIC TEAM
02:53PM 7 AND THE CLIA LAB. AS YOU'VE HEARD, CLIA IS THE CRITICAL
02:54PM 8 LABORATORY IMPROVEMENTS ACT. IT'S THE FEDERAL LAW THAT GOVERNS
02:54PM 9 CLINICAL LABORATORY TESTING IN THE UNITED STATES. IT'S
02:54PM 10 REFERRED TO AS CLIA.

02:54PM 11 I'M GOING TO TALK ABOUT ELIZABETH HOLMES SOME MORE; I'M
02:54PM 12 GOING TO TALK ABOUT THE LAW THAT GOVERNS YOUR DECISION, AND IN
02:54PM 13 PARTICULAR SOME OF THE INSTRUCTIONS THAT JUDGE DAVILA WILL GIVE
02:54PM 14 YOU AT THE CONCLUSION OF ALL OF THE CLOSING ARGUMENT; I'M GOING
02:54PM 15 TO TALK ABOUT WHAT MATTERED TO INVESTORS AND IN PARTICULAR THE
02:54PM 16 WALGREENS RELATIONSHIP; I'M GOING TO TALK ABOUT SPECIFIC
02:54PM 17 THERANOS INVESTORS THAT YOU HEARD ABOUT, THERE ARE SIX OF THEM;
02:54PM 18 THE THERANOS PATIENTS. YOU HEARD TESTIMONY FROM FOUR DIFFERENT
02:54PM 19 PATIENTS, AND I'M GOING TO TALK ABOUT THEM.

02:54PM 20 I'M GOING TO TALK ABOUT THE LABORATORY INFORMATION SYSTEM
02:54PM 21 AND GO INTO DETAIL ABOUT WHY THAT WAS IMPORTANT AND WHY THE
02:54PM 22 GOVERNMENT CAN'T PROVE ITS CASE NOT JUST ON THE PATIENT SIDE
02:54PM 23 BUT ON THE INVESTOR SIDE AS WELL WITHOUT THE LIS.

02:54PM 24 AND THEN I'LL TALK ABOUT AT THE END YOUR DECISION AND SOME
02:54PM 25 OF THE OTHER INSTRUCTIONS ABOUT DELIBERATION AND SO FORTH. SO

02:55PM 1 THAT'S THE ROAD MAP.

02:55PM 2 I'LL COME BACK TO THIS ROAD MAP FROM TIME TO TIME JUST SO
02:55PM 3 YOU CAN SEE WHERE WE ARE.

02:55PM 4 IF YOU GO TO THE NEXT SLIDE.

02:55PM 5 THIS JUST -- RIGHT AT THE BEGINNING HERE, I WANT TO JUST
02:55PM 6 TELL YOU ABOUT SOME OF THE IMPORTANT LANDMARKS THAT OCCURRED IN
02:55PM 7 THIS CASE THAT IS USEFUL TO KEEP IN MIND. AND IT'S A BIT OF A
02:55PM 8 TIMELINE.

02:55PM 9 SO ON AUGUST 13TH, 2009, MR. BALWANI GUARANTEED A LOAN TO
02:55PM 10 THERANOS OF \$10 MILLION;

02:55PM 11 ON OCTOBER 30TH, 2009, THE BOARD, NOT MS. HOLMES, THE
02:55PM 12 BOARD APPOINTED MR. BALWANI AS VICE CHAIRMAN OF THE COMPANY.
02:55PM 13 SO HE WAS ON THE BOARD AT THAT POINT.

02:55PM 14 BETWEEN APRIL 2010 AND DECEMBER 2011, MR. BALWANI INVESTED
02:55PM 15 ABOUT \$4.6 MILLION BY BUYING THERANOS STOCK AND GIVING THAT
02:55PM 16 MONEY TO THE COMPANY.

02:55PM 17 ON APRIL 27TH OF 2010, THERE WAS THAT MEETING WITH THE
02:56PM 18 JOHNS HOPKINS PHYSICIANS WHERE JOHNS HOPKINS EVALUATED THE
02:56PM 19 THERANOS TECHNOLOGY, AND AMONG OTHER THINGS, SAID THAT SPECIAL
02:56PM 20 STRENGTHS OF THE TECHNOLOGY WAS ACCURACY.

02:56PM 21 ON OCTOBER 19TH, 2010, DR. IAN GIBBONS, THEN THE CHIEF
02:56PM 22 SCIENTIST AT THERANOS, TOLD MR. BALWANI ABOUT SCIENTIFIC
02:56PM 23 BREAKTHROUGHS HE HAD ACHIEVED WITH THE THERANOS BLOOD TESTING
02:56PM 24 ANALYZER.

02:56PM 25 BETWEEN 2010 AND 2013, THERE WAS A LOT OF ASSAY

02:56PM 1 DEVELOPMENT WORK AT THERANOS. THIS IS INVENTING REALLY, AN
02:56PM 2 ABILITY TO DO HUNDREDS OF ASSAYS ON VERY SMALL SAMPLES OF BLOOD
02:56PM 3 AS OPPOSED TO THE VENOUS DRAW FROM THE ARM THAT YOU'VE HEARD
02:56PM 4 ABOUT DURING THE COURSE OF THIS TRIAL. THAT IS THE ASSAY
02:56PM 5 DEVELOPMENT WORK.

02:56PM 6 BETWEEN APRIL OF 2011 AND JULY OF 2013, AS I MENTIONED,
02:56PM 7 WALGREENS HAD THE DEVICE, THE THERANOS ANALYZER, TO CONDUCT
02:57PM 8 THEIR TESTING IN THEIR OWN TIME IN THEIR OWN WAY.

02:57PM 9 ON SEPTEMBER 11TH, 2013 AND THEN ON NOVEMBER 13TH, 2013,
02:57PM 10 THERE WERE LAUNCHES OF THE TESTING SERVICE WITH WALGREENS.

02:57PM 11 LET ME JUST PAUSE THERE FOR A MINUTE. THE GOVERNMENT
02:57PM 12 NEVER MENTIONED THIS, WE HAD TO DO THIS, BUT, IN FACT, THE
02:57PM 13 FIRST LAUNCH IN SEPTEMBER, OR SEPTEMBER 11TH TO BE PRECISE,
02:57PM 14 THIS WAS A LAUNCH TO WHAT IS CALLED FRIENDS AND FAMILY AT ONE
02:57PM 15 PARTICULAR WALGREENS STORE IN DOWNTOWN PALO ALTO. AND, OF
02:57PM 16 COURSE, FRIENDS AND FAMILY SHOULD GET ACCURATE BLOOD TESTING,
02:57PM 17 AND THEY'RE FRIENDS AND FAMILY, AND WE WOULDN'T WANT MORE FOR
02:57PM 18 THEM.

02:57PM 19 BUT AS THE EVIDENCE SHOWED, THERE WERE ONLY TWO ASSAYS
02:57PM 20 THAT WERE LAUNCHED AT THAT TIME. THERE WAS TEST RUN. I THINK
02:57PM 21 ONE OF THEM WAS CBC AND ONE OF THEM WAS HBA1C, WHICH IS A TEST
02:58PM 22 USED TO MONITOR DIABETES. AND THAT WAS IT.

02:58PM 23 SO ALL OF THIS DISCUSSION ABOUT DR. ROSENDORFF NOT BEING
02:58PM 24 READY AND HE HAD PROBLEMS WITH SODIUM, WE'LL TALK ABOUT THAT,
02:58PM 25 THAT DOESN'T HAPPEN UNTIL NOVEMBER. SO DR. ROSENDORFF HAS THE

02:58PM 1 TIME THAT HE NEEDED.

02:58PM 2 AND THE GOVERNMENT DIDN'T WANT TO TELL YOU THAT OR DIDN'T
02:58PM 3 TELL YOU THAT.

02:58PM 4 OKAY. SO ON DECEMBER 30TH, 31ST, 2013, WALGREENS
02:58PM 5 COMMITTED TO A NATIONAL ROLLOUT. THERE'S AN AMENDMENT TO THE
02:58PM 6 AGREEMENT THAT I'LL SHOW YOU AS I GO THROUGH THIS WHERE
02:58PM 7 WALGREENS SAID, OKAY, WE'RE COMMITTING TO A NATIONAL ROLLOUT.

02:58PM 8 IS IT GUARANTEED? NOTHING IS GUARANTEED IN BUSINESS.
02:58PM 9 PEOPLE CAN CHANGE THEIR MIND OF COURSE, BUT THAT'S WHAT
02:58PM 10 WALGREENS SAID RIGHT AT THE SAME TIME THAT INVESTORS HALL, BDV,
02:58PM 11 WHICH IS BLACK DIAMOND VENTURES, CHRIS LUCAS, AND ALAN EISENMAN
02:59PM 12 WERE INVESTING. AND THAT'S, AS I'LL TALK ABOUT MORE, THE
02:59PM 13 ESSENCE OF WHAT INVESTORS WERE INVESTING IN HERE, IS THE
02:59PM 14 ABILITY TO MAKE A LOT OF MONEY BECAUSE OF THE WALGREENS LAUNCH
02:59PM 15 AND THE WAY THAT THAT WOULD MAKE THERANOS, IN THE WORDS I USED
02:59PM 16 WITH CHRIS LUCAS, A UNICORN.

02:59PM 17 IN FEBRUARY, FEBRUARY 6TH TO BE EXACT, PFM, THAT'S
02:59PM 18 BRIAN GROSSMAN, THAT'S WHEN THEIR INVESTMENT CAME IN.

02:59PM 19 IN AUGUST OF 2014, WALGREENS DISCUSSES A MAJOR EXPANSION
02:59PM 20 OF THE ROLLOUT. NOW, THIS IS A FUNDAMENTAL DISAGREEMENT
02:59PM 21 BETWEEN THE GOVERNMENT AND THE DEFENSE ABOUT EXACTLY WHAT
02:59PM 22 WALGREENS WAS COMMUNICATING IN THIS AUGUST 2014 TIMEFRAME.

02:59PM 23 AND AS WE SEE WHEN WE GO THROUGH THE EVIDENCE, WHAT WAS
02:59PM 24 COMMUNICATED, AND MAYBE EVEN MORE IMPORTANTLY, WHAT MR. BALWANI
02:59PM 25 WOULD VERY REASONABLY TOOK AWAY, WAS THAT WALGREENS WAS LOOKING

02:59PM 1 TO EXPAND THE ROLLOUT, NOT TO CONTRACT IT AS THE GOVERNMENT HAS
03:00PM 2 TRIED TO CLAIM.

03:00PM 3 ON OCTOBER 31ST, 2014, IN LIGHT OF MR. BALWANI'S
03:00PM 4 UNDERSTANDING OF THE NATIONAL ROLLOUT, RDV, WHICH IS THE DEVOS
03:00PM 5 FAMILY, THEIR INVESTMENT CAME IN, AND DAN MOSLEY, WHO IS THE
03:00PM 6 LAWYER AT CRAVATH, SWAINE & MOORE, A LAW FIRM IN NEW YORK.

03:00PM 7 IN NOVEMBER, NOVEMBER 12TH, AS I'VE SAID, THERANOS APPLIED
03:00PM 8 FOR FDA CLEARANCE FOR HSV-1, THAT'S HERPES SIMPLEX, PUT THAT
03:00PM 9 ASSAY RUNNING ON THE THERANOS SYSTEM.

03:00PM 10 AND THEN ON JULY 7TH, 2015, THERANOS GOT THAT FDA
03:00PM 11 CLEARANCE FOR HSV-1 ON THE THERANOS SYSTEM. AND MR. EDLIN
03:00PM 12 TESTIFIED ABOUT THAT, AND WE'LL TALK ABOUT THAT SOME MORE.

03:00PM 13 SO THOSE ARE SOME OF THE LANDMARKS.

03:00PM 14 BEFORE I GET GOING INTO THE EVIDENCE, IF WE GO TO THE NEXT
03:00PM 15 SLIDE, THIS IS ONE OF THE INSTRUCTIONS THAT JUDGE DAVILA WILL
03:01PM 16 GIVE YOU. AND THAT MR. BALWANI IS PRESUMED TO BE INNOCENT
03:01PM 17 UNLESS AND UNTIL THE GOVERNMENT PROVES HIM GUILTY BEYOND A
03:01PM 18 REASONABLE DOUBT.

03:01PM 19 IN ADDITION, MR. BALWANI DOES NOT HAVE TO TESTIFY OR
03:01PM 20 PRESENT ANY EVIDENCE, HE DOES NOT HAVE TO PROVE INNOCENCE, AND
03:01PM 21 THE GOVERNMENT HAS THE BURDEN OF PROVING EVERY ELEMENT OF THE
03:01PM 22 CHARGES BEYOND A REASONABLE DOUBT.

03:01PM 23 IT'S, OF COURSE, IMPORTANT TO KEEP IN MIND AS WE GO
03:01PM 24 THROUGH THESE CLOSING ARGUMENTS AND AS YOU DELIBERATE, ALL OF
03:01PM 25 THE INSTRUCTIONS ARE IMPORTANT, BUT THAT'S ONE THAT I WANTED TO

03:01PM 1 HIGHLIGHT AT THE BEGINNING.

03:01PM 2 ANOTHER ONE I WANTED TO MAKE SURE WE ALL HAD IN FRONT OF
03:01PM 3 US BECAUSE IT'S A VERY IMPORTANT INSTRUCTION, THE GOVERNMENT
03:01PM 4 HAS TO PROVE INTENT TO DEFRAUD. IT'S ONE OF THE ELEMENTS OF
03:01PM 5 WIRE FRAUD, AND THAT MEANS AN INTENT TO DECEIVE AND CHEAT, THAT
03:01PM 6 IS, TO DEPRIVE SOMEBODY OF MONEY OR PROPERTY BY MEANS OF
03:01PM 7 DECEPTION. THAT'S THE INTENT BEYOND A REASONABLE DOUBT THAT
03:01PM 8 MR. BALWANI WOULD HAVE TO HAVE FOR THE GOVERNMENT TO PROVE ITS
03:01PM 9 CASE.

03:02PM 10 AGAIN, AS I SAID, YOU HAVE TO LOOK AT THIS IN REALTIME AS
03:02PM 11 TO WHAT MR. BALWANI WAS SEEING, NOT WITH THE BENEFIT OF
03:02PM 12 HINDSIGHT OR OUT OF PLACE TIMELINES.

03:02PM 13 AND THEN IN ADDITION, IT'S IMPORTANT TO UNDERSTAND THE
03:02PM 14 GOOD FAITH INSTRUCTION. YOU CAN CONSIDER WHETHER MR. BALWANI
03:02PM 15 HAD AN HONEST, GOOD FAITH BELIEF IN THE TRUTH OF SPECIFIC
03:02PM 16 MISREPRESENTATIONS ALLEGED IN THE INDICTMENT IN DETERMINING
03:02PM 17 WHETHER OR NOT HE ACTED WITH INTENT TO DEFRAUD.

03:02PM 18 FOR EXAMPLE, MR. BALWANI'S BELIEF BASED ON A LOT OF
03:02PM 19 EVIDENCE THAT HE SAW OF THE THERANOS TECHNOLOGY WORKING AND
03:02PM 20 BEING GREAT IS ONE OF THE ASPECTS OF GOOD FAITH THAT I'LL BE
03:02PM 21 TALKING ABOUT.

03:02PM 22 OKAY. LET'S GO TO THE NEXT SLIDE, AND HERE'S THE ROAD MAP
03:02PM 23 AGAIN. MR. BALWANI AND HIS BACKGROUND AND INTRODUCTION TO
03:02PM 24 THERANOS.

03:02PM 25 WHO IS SUNNY BALWANI? THIS IS HIS BIO. THIS IS IN

03:03PM 1 EVIDENCE.

03:03PM 2 I SHOULD MENTION IN THE BEGINNING, IN THE SLIDES I'M GOING
03:03PM 3 TO SHOW YOU, YOU CAN SEE IN THE BOTTOM LEFT THERE'S A SOURCE,
03:03PM 4 AND THAT'S JUST A CITATION AS TO WHERE THE MATERIAL COMES FROM.

03:03PM 5 AND AS MR. SCHENK TOLD YOU, YOU'RE NOT GOING TO HAVE MY
03:03PM 6 SLIDES OR THE GOVERNMENT'S SLIDES. YOU'LL HAVE TO, YOU KNOW,
03:03PM 7 JUST EITHER REMEMBER THIS OR WRITE IT DOWN IN YOUR NOTES.

03:03PM 8 SO I SEE A LOT OF YOU DO TAKE NOTES. AND IF SOMETHING
03:03PM 9 OCCURS TO YOU THAT IS IMPORTANT, IT WOULD BE A GOOD IDEA TO
03:03PM 10 WRITE THAT DOWN IN YOUR NOTEBOOKS SO THAT YOU'LL HAVE ACCESS TO
03:03PM 11 THAT WHEN YOU DELIBERATE.

03:03PM 12 AND HERE THIS PARTICULAR BIO IS EXHIBIT -- TRIAL
03:03PM 13 EXHIBIT 5805, AND IT'S AN EXHIBIT WHERE IT TALKS ABOUT, AMONG
03:03PM 14 OTHER THINGS, MR. BALWANI'S BACKGROUND.

03:03PM 15 HE'S AN ENTREPRENEUR AND A COMPUTER SCIENTIST. HE JOINED
03:03PM 16 THERANOS AFTER DROPPING OUT OF STANFORD UNIVERSITY COMPUTER
03:03PM 17 SCIENCE PROGRAM.

03:03PM 18 HE RECEIVED A MASTER'S OF BUSINESS ADMINISTRATION, AN MBA,
03:04PM 19 AT UNIVERSITY OF CALIFORNIA BERKELEY. HE RECEIVED AN
03:04PM 20 UNDERGRADUATE DEGREE FROM THE UNIVERSITY OF TEXAS AT AUSTIN.

03:04PM 21 HE STARTED OUT WORKING AT LOTUS DEVELOPMENT CORPORATION,
03:04PM 22 AFTER WHICH HE SERVED AT MICROSOFT IN VARIOUS ROLES. HE LATER
03:04PM 23 STARTED HIS OWN COMPANY.

03:04PM 24 AND THEN IT GOES ON. HE ENDED UP SELLING THAT COMPANY TO
03:04PM 25 A COMPANY CALLED COMMERCEONE.

03:04PM 1 AND AT THE TIME THIS BIO WAS PUT FORWARD, HE WAS THE
03:04PM 2 PRESIDENT AND CHIEF OPERATING OFFICER OF THERANOS.

03:04PM 3 SO THAT'S A LITTLE BIT ABOUT HIS BACKGROUND.

03:04PM 4 NOW, WHAT KIND OF COMPANY WAS MR. BALWANI JOINING WHEN HE
03:04PM 5 JOINED THERANOS IN 2009? WHAT HAD THERANOS ACCOMPLISHED?

03:04PM 6 SO THE GOVERNMENT HAS SPENT A FAIR AMOUNT OF TIME TALKING
03:04PM 7 ABOUT PHARMACEUTICAL RELATIONSHIPS THAT THERANOS HAD, AND
03:04PM 8 THEY'VE FOCUSED ON TWO IN PARTICULAR. ONE IS SCHERING-PLOUGH,
03:04PM 9 A LARGE PHARMA COMPANY, AND THE OTHER ONE IS PFIZER. BUT THEY
03:04PM 10 NEVER TALK ABOUT ALL OF THE OTHER RELATIONSHIPS WITH PHARMA
03:05PM 11 COMPANIES THAT THERANOS HAD.

03:05PM 12 AND IF YOU GO TO EXHIBIT 7753, WHICH IS NOTED THERE,
03:05PM 13 YOU'LL SEE ALL OF THE CONTRACTS THAT THERANOS HAD WITH CELGENE;
03:05PM 14 AND CENTOCOR; MAYO CLINIC, A LEADING HEALTH CARE INSTITUTION,
03:05PM 15 NOT NECESSARILY A PHARMA COMPANY; MERCK, NOVARTIS; PFIZER; AND
03:05PM 16 SCHERING-PLOUGH OF COURSE; ASTRAZENECA. THE GOVERNMENT
03:05PM 17 MENTIONED NONE OF THOSE.

03:05PM 18 BUT I WANT TO FOCUS ON ONE IN PARTICULAR, WHICH IS
03:05PM 19 GLAXOSMITHKLINE, GSK. SO IF WE GO TO THE NEXT SLIDE.

03:05PM 20 THIS IS AN EMAIL THAT WAS SENT FROM ELIZABETH HOLMES TO
03:05PM 21 THOMAS BREUER AT GSK, GLAXOSMITHKLINE, ON DECEMBER 15TH, 2009.

03:05PM 22 AND THE CONSPIRACY THAT IS ALLEGED IN THIS CASE, BY THE
03:05PM 23 WAY, ON THE INVESTOR SIDE IS FROM 2010 TO 2015. THAT'S WHAT
03:05PM 24 JUDGE DAVILA WILL TELL YOU DURING THE INSTRUCTIONS. THIS IS
03:06PM 25 BEFORE THAT, THIS IS IN DECEMBER OF 2009.

03:06PM 1 IT'S JUST SHORTLY AFTER MR. BALWANI JOINED THE COMPANY.
03:06PM 2 SO HE DIDN'T JOIN THE COMPANY FOR THE PURPOSE OF COMMITTING
03:06PM 3 FRAUD. BUT IN DECEMBER OF 2009, HE'S INFORMED OF THIS, WHICH
03:06PM 4 IS ELIZABETH HOLMES SENDING NOT TO JUST WALGREENS OR AN
03:06PM 5 INVESTOR, BUT TO GSK ITSELF AN EMAIL WITH SOME DOCUMENTS
03:06PM 6 ATTACHED.

03:06PM 7 AND WHAT DOES IT SAY? "IT WAS GREAT TO MEET YOU. FOLLOW
03:06PM 8 UP TO OUR CONVERSATION I'VE ATTACHED THREE DOCUMENTS."

03:06PM 9 THERE'S A SUMMARY, AND "THE SECOND --" AND THAT'S WHAT
03:06PM 10 I'VE HIGHLIGHTED HERE -- "IS A COPY OF THE VALIDATION REPORT
03:06PM 11 FROM THE GSK STAFF WHO TESTED THERANOS TECHNOLOGIES IN RTP,"
03:06PM 12 RESEARCH TECHNOLOGY PARK.

03:06PM 13 "AS YOU CAN SEE IN THAT ATTACHMENT, GSK'S LAB DIRECTOR
03:06PM 14 CONCLUDED THAT THERANOS SYSTEMS ELIMINATE THE NEED FOR A LAB.
03:07PM 15 THE REPORT SHOWS THE ABILITY TO GET BETTER SENSITIVITY AND REAL
03:07PM 16 TIME DATA USING THERANOS."

03:07PM 17 THIS IS NOT MS. HOLMES REPRESENTING THIS TO SOME INVESTOR.
03:07PM 18 THIS IS MS. HOLMES SAYING THIS BACK TO GSK. AND IT SAYS, "THE
03:07PM 19 SECOND IS A COPY OF THE VALIDATION REPORT FROM THE GSK STAFF."

03:07PM 20 NOW, THIS IS WHAT MR. BALWANI IS INFORMED OF IN DECEMBER
03:07PM 21 OF 2009.

03:07PM 22 AND IF YOU GO TO THE NEXT PAGE, THIS IS A PAGE FROM ONE OF
03:07PM 23 THE SOME OF THE MATERIALS ATTACHED TO THAT SAME EMAIL, AND THIS
03:07PM 24 HAPPENS TO BE ON PAGE 6 OF THE EXHIBIT.

03:07PM 25 AND IT SAYS, "THERANOS AND GSK.

03:07PM 1 "GSK COMPLETED A COMPREHENSIVE VALIDATION OF THERANOS
03:07PM 2 SYSTEMS IN 2008.

03:07PM 3 "VALIDATION WAS INDEPENDENTLY CONDUCTED RUN BY GSK STAFF
03:07PM 4 AT RTP."

03:07PM 5 "VALIDATION CONCLUDED THERANOS SYSTEMS ELIMINATE THE NEED
03:07PM 6 FOR A LAB."

03:07PM 7 AND THEN IT GOES ON LATER.

03:07PM 8 AND THEN IT SAYS, "THERANOS AND GSK HAVE FULLY EXECUTED
03:07PM 9 MSA," AN AGREEMENT.

03:08PM 10 SO WHEN MR. BALWANI GETS THIS, WHAT WOULD HE TAKE AWAY
03:08PM 11 FROM THIS?

03:08PM 12 WOULD HE TAKE AWAY WHAT THE GOVERNMENT IS TELLING YOU,
03:08PM 13 WHICH IS, OH, YEAH, THIS IS SOME KIND OF FRAUDULENT OPERATION?

03:08PM 14 OR WHEN HE SEES THAT THERE'S AN EMAIL BEING SENT TO GSK
03:08PM 15 WITH THIS INFORMATION, HE WOULD TAKE AWAY, YEAH, IT LOOKS LIKE
03:08PM 16 GSK COMPREHENSIVELY VALIDATED THE THERANOS SYSTEM.

03:08PM 17 AND LET'S LOOK AT THAT IN PARTICULAR. IF WE GO TO THE
03:08PM 18 NEXT PAGE, THIS IS FROM THE SAME ATTACHMENTS TO THE EMAILS,
03:08PM 19 EXCERPTS FROM THE GSK METABOLIC STUDY REPORT.

03:08PM 20 IT SAYS, "BACKGROUND INFORMATION:

03:08PM 21 "THE THERANOS SYSTEM WAS EVALUATED AT GSK TO PROFILE
03:08PM 22 ACTIVE GLP-1 AND C-PEPTIDE VALUES AND THESE DATA WERE COMPARED
03:08PM 23 TO GOLD STANDARD ELISA'S," AND IT GOES ON.

03:08PM 24 "THE KEY PROJECT OBJECTIVES FOUND IN THE ATTACHED
03:08PM 25 STATEMENT WERE," AND AMONG OTHER THINGS, "TO ASSESS THE

03:08PM 1 FUNCTIONALITY, SPECIFICITY, REPRODUCIBILITY, ACCURACY, AND
03:08PM 2 PRECISION OF THE THERANOS SYSTEM AND TO ASSESS THE THERANOS
03:09PM 3 DATA REPORTING AND TRANSFER FUNCTIONS."

03:09PM 4 IT TALKS ABOUT 30 PLASMA SAMPLES BEING CHOSEN.
03:09PM 5 AND THEN THE "GSK METABOLIC BIOMARKER LAB COMMENTS:
03:09PM 6 "DATA SHOWED GOOD CORRELATION," WITH THE R2'S, WHICH WE'LL
03:09PM 7 TALK ABOUT MORE LATER, "INTER-INSTRUMENT PRECISION;
03:09PM 8 "MACHINES WORKED WELL;
03:09PM 9 "TOUCH-SCREEN INTERFACE WAS EASY TO USE;
03:09PM 10 "CARTRIDGES WERE PRETTY STRAIGHTFORWARD (EASY TO HANDLE
03:09PM 11 AND LOAD) ;
03:09PM 12 "ASSAYS TOOK APPROXIMATELY 1 HOUR AND 15 MINUTES PER
03:09PM 13 CARTRIDGE.
03:09PM 14 AND THE OVERALL CONCLUSION, "THE METABOLIC BIOMARKER LAB
03:09PM 15 HAS A FAVORABLE IMPRESSION OF THE TECHNOLOGY, SYSTEM AND
03:09PM 16 RECOMMENDS GSK CLINICAL GROUPS TO WORK WITH THERANOS."

03:09PM 17 IF YOU GO TO THE TOP OF THIS PAGE, YOU CAN SEE RIGHT THERE
03:09PM 18 THIS IS DOCUMENTS BEING SENT TO GSK, IT HAS A GSK,
03:09PM 19 GLAXOSMITHKLINE LOGO, AND THE THERANOS LOGO.

03:09PM 20 AND SO THE GOVERNMENT DIDN'T TALK ABOUT THIS EXHIBIT,
03:09PM 21 DIDN'T SHOW IT TO YOU, AND DIDN'T TALK ABOUT GSK, AND DIDN'T
03:10PM 22 TALK ABOUT ALL OF THE PHARMA RELATIONSHIPS. WE HAVE TO SHOW
03:10PM 23 YOU THAT.

03:10PM 24 WHAT WOULD MR. BALWANI HAVE THOUGHT AFTER HE SEES THAT IN
03:10PM 25 TERMS OF THE TECHNOLOGY BEING GREAT.

03:10PM 1 AND WE TALKED DURING THE TRIAL, AND I MENTIONED A FEW
03:10PM 2 MOMENTS AGO ABOUT THE LOAN AGREEMENT. I JUST WANT TO SHOW YOU
03:10PM 3 THOSE DOCUMENTS.

03:10PM 4 THIS IS IN AUGUST OF 2009, BEFORE ANY ALLEGED CONSPIRACY.
03:10PM 5 MR. BALWANI GUARANTEED THE LOAN. THIS IS ONE OF THE DOCUMENTS
03:10PM 6 THAT ACCOMPLISHES THAT.

03:10PM 7 AND AS YOU'VE HEARD FROM MS. SPIVEY, WHAT HE ACTUALLY DOES
03:10PM 8 HERE, IT'S \$10 MILLION. HE HAS TO PUT THAT ASIDE AND NOT USE
03:10PM 9 IT. THAT'S THE COLLATERAL.

03:10PM 10 AND THEN IF THERANOS WERE TO DEFAULT ON THAT LOAN, THEN
03:10PM 11 THE LENDER, WHICH WAS FIDELITY, JUST TAKES THE MONEY. SO IT'S
03:10PM 12 THE SAME THING ECONOMICALLY AS IF MR. BALWANI WOULD HAVE LENT
03:10PM 13 THE MONEY DIRECTLY TO THERANOS BECAUSE IN THE CASE OF A DIRECT
03:10PM 14 LOAN, IF THERANOS DOESN'T REPAY THE MONEY, OF COURSE
03:11PM 15 MR. BALWANI WOULD LOSE THE MONEY.

03:11PM 16 IN THIS CASE, IF THERANOS DOESN'T PAY BACK THE LOAN,
03:11PM 17 FIDELITY TAKES THE MONEY FROM MR. BALWANI. SO IT'S ESSENTIALLY
03:11PM 18 A LOAN TO THERANOS FROM MR. BALWANI AND THAT WAS \$10 MILLION.
03:11PM 19 NOT OF MONEY HE GOT FROM INVESTORS OR ANYTHING LIKE THAT. IT
03:11PM 20 WAS MR. BALWANI'S OWN HARD EARNED MONEY THAT HE PUT UP.

03:11PM 21 NOW, LATER THAT LOAN WAS INCREASED TO \$10 MILLION, AND
03:11PM 22 THAT'S THE EMAIL THAT SHOWS THAT. HE HAS TO CONFIRM TO
03:11PM 23 MR. BERMEL THAT HE'S OKAY WITH INCREASING THE LINES FROM 10 TO
03:11PM 24 12 MILLION. AND HE SAYS, YES, HE'S FINE.

03:11PM 25 AND SO ULTIMATELY, MR. BALWANI WAS ON THE HOOK FOR

03:11PM 1 \$12 MILLION. HE DID THAT BECAUSE HE'S JOINING A COMPANY THAT
03:11PM 2 HAS ACCOMPLISHED GREAT THINGS ALREADY WITH ITS BOARD, WITH ITS
03:11PM 3 PHARMA RELATIONSHIPS. IT'S NOT JUST BECAUSE HE WANTS TO GIVE
03:11PM 4 MONEY TO HIS GIRLFRIEND OR SOMETHING LIKE THIS. THIS IS WAY,
03:12PM 5 WAY BEYOND THAT.

03:12PM 6 DID MR. BALWANI OBTAIN ANY GREAT RICHES OR ANY RICHES FROM
03:12PM 7 THERANOS? NO.

03:12PM 8 HIS SALARY WAS SET AT \$99,000 PER YEAR. THIS IS A COMPANY
03:12PM 9 THAT AT THE HEIGHT OF IT, WHEN THE SHARES WERE \$17, IT WAS
03:12PM 10 VALUED AT ABOUT \$9 BILLION. THAT IS A \$9 BILLION COMPANY.
03:12PM 11 MR. BALWANI WAS EARNING \$99,000 A YEAR.

03:12PM 12 IT'S NOT BAD MONEY. IT'S PERFECTLY GOOD. BUT THIS ISN'T
03:12PM 13 TRYING TO PROFIT IN ANY WAY FROM THERANOS OR ITS INVESTORS OR
03:12PM 14 ITS PATIENTS.

03:12PM 15 OKAY. HOW DID MR. BALWANI END UP JOINING THERANOS?

03:12PM 16 WELL, THE GOVERNMENT HAS SUGGESTED THAT IT WAS
03:12PM 17 MR. BALWANI'S GIRLFRIEND GIVING HIM A SPOT AT THE COMPANY.

03:12PM 18 WELL, AS WE SAW, IT WAS THE BOARD THAT APPOINTED
03:13PM 19 MR. BALWANI TO THE BOARD. AND THE BOARD WAS CONSISTING AT THAT
03:13PM 20 TIME OF PROFESSOR ROBERTSON FROM STANFORD; DON LUCAS;
03:13PM 21 ROBERT SHAPIRO; PETER THOMAS; AND ELIZABETH HOLMES. SO MS.
03:13PM 22 HOLMES HAD ONE VOTE.

03:13PM 23 AND HERE IS WHAT THE BOARD SAID IN THE MINUTES OR WHAT THE
03:13PM 24 MINUTES REFLECT. THE BOARD DISCUSSED ADDING A NEW DIRECTOR TO
03:13PM 25 THE BOARD AND REVIEWED SEVERAL CANDIDATES FOR CONSIDERATION.

03:13PM 1 AFTER DISCUSSION, THE BOARD UNANIMOUSLY AGREED TO ELECT
03:13PM 2 RAMESH "SUNNY" BALWANI AS VICE CHAIRMAN.

03:13PM 3 SO THAT'S THE EVIDENCE OF WHAT HAPPENED, NOT WHAT THE
03:13PM 4 GOVERNMENT TOLD YOU IN OPENING OR IN CLOSING.

03:13PM 5 LATER, JUST TO ROUND OUT THAT PICTURE, MR. BALWANI WAS
03:13PM 6 MADE FORMALLY PRESIDENT AND COO. AND AGAIN, THESE ARE THE
03:13PM 7 BOARD MINUTES THAT REFLECT THIS CORPORATE ACTION.

03:13PM 8 THE BOARD THEN APPROVED THE ADDITION OF AN OPERATIONAL
03:13PM 9 TITLE OF PRESIDENT AND COO OF SUNNY BALWANI AFTER DISCUSSING
03:14PM 10 HIS PERFORMANCE AND CONTRIBUTIONS AND OPERATIONAL ROLE.

03:14PM 11 SO THIS IS ABOUT A YEAR OR SO INTO MR. BALWANI'S TIME AT
03:14PM 12 THERANOS, AND AFTER DISCUSSING HIS PERFORMANCE AND
03:14PM 13 CONTRIBUTIONS, THE BOARD DECIDED TO BESTOW THOSE TITLES ON HIM.

03:14PM 14 NOW, DURING THE COURSE OF THE TRIAL THE GOVERNMENT HAS
03:14PM 15 SUGGESTED WITH INVESTORS THAT THE RELATIONSHIP BETWEEN
03:14PM 16 MR. BALWANI AND MS. HOLMES WAS SOME KIND OF SECRET. I MEAN, IT
03:14PM 17 SEEMS CLEAR FROM THE EVIDENCE THAT THEY DIDN'T COME TO THE
03:14PM 18 OFFICE WEARING THEIR HEARTS ON THEIR SLEEVE OR ENGAGE IN PUBLIC
03:14PM 19 DISPLAYS OF AFFECTION OR THINGS LIKE THAT. THAT WOULD HAVE
03:14PM 20 BEEN INAPPROPRIATE AND NOT PROFESSIONAL.

03:14PM 21 AND THE FACT THAT THEY CONDUCTED THEMSELVES PROFESSIONALLY
03:14PM 22 DOESN'T MEAN THAT INVESTORS WERE DECEIVED ON THIS. AND HERE IS
03:14PM 23 CHRIS LUCAS WHO KNEW FULL WELL ABOUT THE ROMANTIC RELATIONSHIP.
03:14PM 24 SO DID BRYAN TOLBERT, WHO HAD A LOT OF CONTACT WITH
03:14PM 25 CHRIS LUCAS.

03:14PM 1 AND THIS WASN'T A SECRET. IT WASN'T A SECRET TO THE
03:14PM 2 BOARD. IN FACT, CHRIS LUCAS HEARD THIS FROM DON LUCAS WHO WAS
03:15PM 3 ON THE BOARD.

03:15PM 4 SO HAS REALLY NOTHING TO DO WITH THIS CASE, ALTHOUGH IN
03:15PM 5 THE COURSE OF THIS TRIAL YOU'VE HEARD SOME THINGS ABOUT THAT
03:15PM 6 FROM THE GOVERNMENT.

03:15PM 7 I MENTIONED A FEW MINUTES AGO MR. BALWANI'S PURCHASES OF
03:15PM 8 STOCK. THIS IS IMPORTANT. AND IT'S NOT WHAT THE GOVERNMENT
03:15PM 9 SAID BECAUSE, OH, ONCE HE PURCHASED STOCK, HE HAD SKIN IN THE
03:15PM 10 GAME. HE DIDN'T HAVE TO DO THIS. LET ME EXPLAIN HOW THIS
03:15PM 11 WORKS, OKAY?

03:15PM 12 SO WHAT MR. BALWANI OBTAINED -- AND THIS COMES FROM
03:15PM 13 MS. SPIVEY'S TESTIMONY. SHE WENT IN THOSE TIMES AS DANISE YAM,
03:15PM 14 BUT HER NAME IS SO HAN SPIVEY.

03:15PM 15 AS SHE TOLD YOU, THESE ARE STOCK OPTIONS. SO WHAT
03:15PM 16 MR. BALWANI HAD WAS THE RIGHT TO BUY STOCK AT A CERTAIN PRICE.
03:15PM 17 HE DIDN'T HAVE THE STOCK. AND HAVING THE STOCK OPTION DOESN'T
03:15PM 18 MEAN YOU HAVE TO DO ANYTHING. YOU DON'T HAVE TO PAY MONEY TO
03:15PM 19 THE COMPANY. THE SMART THING TO DO MIGHT BE TO JUST HOLD THE
03:15PM 20 STOCK OPTION, WAIT TO SEE IF THE COMPANY IS SUCCESSFUL, AND
03:15PM 21 THEN GIVE THE MONEY TO THE COMPANY IF IT'S GOING TO WORK OUT.

03:16PM 22 SO, FOR EXAMPLE, IF YOU HAD A STOCK OPTION THAT ALLOWED
03:16PM 23 YOU TO BUY STOCK AT A DOLLAR PER SHARE, AND YOU JUST HELD ON TO
03:16PM 24 THE STOCK OPTION, AND THEN A FEW YEARS LATER, THE STOCK WAS
03:16PM 25 WORTH \$20 A SHARE, WELL, YOU COULD BUY THAT STOCK AT \$1 AND YOU

03:16PM 1 WOULD HAVE SOMETHING WORTH \$20, AND IF YOU HAD MANY SHARES,
03:16PM 2 THAT COULD BE A LOT OF MONEY. SO MR. BALWANI COULD HAVE JUST
03:16PM 3 DONE THAT.

03:16PM 4 INSTEAD, WHAT HE DID WAS HE ACTUALLY BOUGHT THE STOCK ON
03:16PM 5 THESE DAYS, APRIL 2010, AUGUST 2011, AND DECEMBER OF 2011. HE
03:16PM 6 ACTUALLY BOUGHT THE STOCK. DIDN'T HOLD THE OPTIONS. ONLY
03:16PM 7 SOMEONE WHO BELIEVES IN THE COMPANY AND ITS TECHNOLOGY WOULD DO
03:16PM 8 THAT BECAUSE OTHERWISE YOU COULD JUST HEDGE YOUR BETS, JUST
03:16PM 9 WAIT, JUST HOLD THE STOCK OPTIONS AND SEE IF EVERYTHING WORKS
03:16PM 10 OUT, AND THEN MAKE THE MONEY, AND THEN PAY THE MONEY TO GET
03:16PM 11 EVEN MORE.

03:16PM 12 HERE, WHAT HE ACTUALLY DID WAS PAID THE COMPANY THESE
03:16PM 13 DOLLARS, AND IT ENDED UP BEING \$4,680,000. THAT'S WHAT
03:17PM 14 MR. BALWANI DID. SO NOTHING IN THIS CASE SHOWS THAT ANYONE WAS
03:17PM 15 FORCING HIM TO DO THAT. HE COULD OF JUST WAITED. HE DIDN'T
03:17PM 16 HEDGE HIS BET. HE WAS ALL IN, LITERALLY ALL IN.

03:17PM 17 OKAY. LET'S TALK ABOUT THERANOS'S BUSINESS AND TECHNOLOGY
03:17PM 18 AND BACK TO THE ROAD MAP THERE FOR A MINUTE.

03:17PM 19 SO THIS IS A PICTURE OF THE EDISON 3.5. AND YOU CAN SEE
03:17PM 20 THE TOUCHSCREEN, AND IT CAN SHOWS APPS ON THE TOUCHSCREEN, AND
03:17PM 21 THIS WAS A BLOOD TESTING DEVICE THAT WAS IN USE, IN ACTUAL USE
03:17PM 22 IN THE CLINICAL LAB THAT THERANOS HAD DEVELOPED.

03:17PM 23 THE NEXT PICTURE, THOUGH, IS WHAT IS KNOWN AS THE THERANOS
03:17PM 24 4S. THIS WAS THE NEXT GENERATION DEVICE, THE DEVICE THAT THEY
03:17PM 25 WERE USING GENERATING OR DEVELOPING FOR THE U.S. MILITARY, AND

IT HAS THESE PARTS THAT ARE SHOWN HERE IN THE BLOWUP.

FOR EXAMPLE, THERE'S A SPECTROPHOTOMETER, THERE'S A CENTRIFUGE, THERE'S A CYTOMETER, THERE'S A CARTRIDGE, AND SLIGHTLY TO THE LEFT THERE'S A CARTRIDGE, AND THERE'S A PICTURE.

AND THEN IN THE FRONT OF THE MACHINE YOU CAN SEE THERE'S A LITTLE SLOT. SO WHAT HAPPENS IS IN THE CARTRIDGE, THAT'S WHERE THE REAGENTS ARE, THE CHEMICALS THAT ARE INTERACTING WITH THE BLOOD TO CREATE A RESULT. AND THEN THE BLOOD TEST, THE BLOOD SAMPLE RATHER WOULD GO IN THAT CARTRIDGE, AND ALL OF THAT GETS INSERTED INTO THE SLOT INSIDE OF THAT MACHINE. AND INSIDE OF THE MACHINE, YOU CAN SEE ON THE TOP THERE'S A MATERIAL HANDLING ROBOT WHERE ROBOTIC ARMS IN A ROBOTIC WAY WOULD TAKE THE RIGHT AMOUNT OF CHEMICAL OR REAGENT FROM THE STORAGE MIXED WITH THE BLOOD SAMPLE AND SO FORTH TO EVENTUALLY GENERATE A RESULT. SO THAT'S WHAT THE THERANOS TECHNOLOGY WAS. THAT'S THE CONCEPT.

3.5 WAS ESSENTIALLY SIMILAR. ALTHOUGH AS YOU HEARD, 3.5 WAS RUNNING, COULD RUN IMMUNOASSAYS, WHICH IS ONE TYPE OF BLOOD TESTING. AS YOU'LL SEE IN A MINUTE, THIS DEVICE COULD RUN ALL OF THE DIFFERENT FORMS OF BLOOD TESTING, IMMUNOASSAYS, CYTOMETRY, NUCLEIC ACID AMPLIFICATION AND GENERAL CHEMISTRY.

FROM THE VERY BEGINNING, INVESTORS, IN THIS CASE CHRIS LUCAS, WERE TOLD THAT OVER TIME THERANOS WOULD CONTINUE TO REFINE ITS TECHNOLOGY AND THAT OVER TIME THE TECHNOLOGY WOULD BE ABLE TO DO MORE AND MORE. THIS WAS ALL OF THE WAY

03:19PM 1 BACK IN 2006 BEFORE MR. BALWANI'S TIME AT THERANOS, BUT THAT'S
03:19PM 2 WHAT MS. HOLMES AND THERANOS HAD INFORMED MR. LUCAS AT THE
03:19PM 3 TIME, THAT THERE WOULD BE PROGRESS.

03:19PM 4 AND, OF COURSE, WE KNOW FROM COMMON SENSE THAT'S ALWAYS
03:19PM 5 THE CASE WITH A COMPANY. WHATEVER PRODUCT YOU DEVELOP,
03:19PM 6 COMPANIES ARE ALWAYS LOOKING TO IMPROVE THEIR PRODUCT, ADD MORE
03:19PM 7 FEATURES, MAKE IT MORE USER FRIENDLY AND SO FORTH.

03:19PM 8 STICKING WITH THE TOPIC OF THERANOS TECHNOLOGY, THIS IS A
03:20PM 9 COMPARISON OF YOUR STANDARD BLOOD VIAL, WHICH ARE THE FOUR
03:20PM 10 TUBES ON THE LEFT WITH THE SIZE OF THE NANOTAINER.

03:20PM 11 WHAT THIS PICTURE DOESN'T SHOW YOU IS THE CAPILLARY TUBE
03:20PM 12 PART. SO THE NANOTAINER IS THE SMALL CONTAINER THAT WOULD HOLD
03:20PM 13 THE SMALL AMOUNT OF BLOOD FOR THE THERANOS FINGERSTICK TEST,
03:20PM 14 AND THEN IN PRACTICE THERE WOULD BE THE PART CALLED THE
03:20PM 15 CAPILLARY TUBE THAT ACTUALLY PUNCTURES THE FINGER, AND THEN THE
03:20PM 16 BLOOD WOULD, BY WHAT IS CALLED THE CAPILLARY ACTION, COME INTO
03:20PM 17 THE TUBE, BE LOADED INTO THE NANOTAINER. ULTIMATELY, THIS
03:20PM 18 NANOTAINER WOULD TAKE THE PLACE OF THE VIALS OF BLOOD. THAT
03:20PM 19 WAS THE CONCEPT.

03:20PM 20 YOU ALSO HEARD A LOT ABOUT MODIFIED PREDICATES, AND BY NOW
03:20PM 21 EVERYONE PROBABLY KNOWS WHEN WE SAY "PREDICATES" WE'RE TALKING
03:20PM 22 ABOUT COMMERCIAL BLOOD TESTING EQUIPMENT. SOMETIMES WE REFER
03:20PM 23 TO THEM AS FDA APPROVED DEVICES OR UNMODIFIED COMMERCIAL
03:21PM 24 DEVICES.

03:21PM 25 THERANOS MODIFIED PREDICATE DEVICES LIKE THE DEVICE CALLED

03:21PM 1 THE SIEMENS ADVIA, BUT OTHERS AS WELL, TO ALLOW THOSE DEVICES
03:21PM 2 TO TEST VERY SMALL SAMPLES. THAT'S NOT WHAT THEY WERE SOLD
03:21PM 3 FOR, BUT THERANOS WITH ITS TEAM MODIFIED THESE FOR THAT REASON.

03:21PM 4 THIS WAS, WHAT I'M SHOWING YOU HERE, WAS THE PROVISIONAL
03:21PM 5 PATENT APPLICATION WHAT THERANOS FILED WITH THE U.S. PATENT AND
03:21PM 6 TRADEMARK OFFICE.

03:21PM 7 AS JUDGE DAVILA TOLD YOU WHEN THIS DOCUMENT WAS ADMITTED,
03:21PM 8 THIS IS ADMITTED FOR SHOWING THAT THERE WAS SUCH A PATENT
03:21PM 9 APPLICATION FILED. AND I JUST WANT TO SHOW YOU WHAT IT
03:21PM 10 ACTUALLY SAYS.

03:21PM 11 THE TITLE OF THE INVENTION HERE, DANIEL YOUNG IS ONE OF
03:21PM 12 THE INVENTORS, YOU CAN SEE HIGHLIGHTED THERE. IT'S DEVICES,
03:21PM 13 METHODS AND SYSTEMS FOR REDUCING SAMPLE VOLUME.

03:21PM 14 IF YOU GO TO THE NEXT PAGE, THIS IS EXHIBIT 20830. THIS
03:22PM 15 SHOWS WHAT THE DESCRIPTION OF WHAT THOSE MODIFICATIONS REALLY
03:22PM 16 WERE AS THERANOS REPORTED TO THE PATENT OFFICE.

03:22PM 17 AND IF YOU GO TO THE NEXT PAGE, IT SAYS THAT AT THE BOTTOM
03:22PM 18 THERE, "APPLICANTS PROVIDE METHODS FOR MODIFYING A CLINICAL
03:22PM 19 ANALYSIS DEVICE."

03:22PM 20 SO THERANOS NOT ONLY MODIFIED THE PREDICATE MACHINES OR
03:22PM 21 THE COMMERCIAL MACHINES, BUT ALSO FILED A PATENT APPLICATION TO
03:22PM 22 PRESERVE WHAT THEY BELIEVED OBVIOUSLY WAS IMPORTANT TECHNOLOGY
03:22PM 23 THAT THE COMPANY WANTED TO PROTECT.

03:22PM 24 THE GOVERNMENT HAS SAID THAT WAS SOME KIND OF SECRET, THAT
03:22PM 25 THEY WERE MODIFYING PREDICATES. WELL, HERE'S THE PATENT

03:22PM 1 APPLICATION THAT THEY FILED ABOUT THOSE MODIFIED PREDICATES.

03:22PM 2 THERANOS HAD, JUST CONTINUING ON AGAIN WITH THE TOPIC OF
03:22PM 3 THERANOS'S TECHNOLOGY, THERANOS HAD SOFTWARE. YOU HEARD
03:22PM 4 MR. BALWANI HAD A SOFTWARE BACKGROUND AND WAS INVOLVED WITH
03:22PM 5 SOFTWARE.

03:22PM 6 YOU KIND OF HAVE TO REMEMBER AT THE TIME GOING BACK TO
03:22PM 7 2013 OR SO, HAVING APPS ON YOUR PHONE TO PROVIDE HEALTH CARE
03:23PM 8 INFORMATION, THAT SEEMS MAYBE COMMONPLACE NOW, THAT WASN'T
03:23PM 9 NECESSARILY THE CASE THEN, BUT THERANOS HAD DEVELOPED THAT, AND
03:23PM 10 HERE'S SOME OF THE TECHNOLOGY SHOWN HERE ON THIS PICTURE, APPS
03:23PM 11 ON THE PHONE AND TRYING TO MAKE THIS A VERY USER FRIENDLY
03:23PM 12 EXPERIENCE. THAT WAS PART OF THERANOS'S MISSION.

03:23PM 13 ANOTHER PART OF THERANOS'S BUSINESS WAS THE LIS SYSTEM,
03:23PM 14 THE LABORATORY INFORMATION SYSTEM. AS MR. SONNIER TOLD YOU,
03:23PM 15 THIS IS WHAT A MICROSOFT SQL SERVER CONFIGURATION WOULD LOOK
03:23PM 16 LIKE. THIS MAY NOT BE EXACTLY WHAT THERANOS'S LABORATORY
03:23PM 17 INFORMATION SYSTEM CONFIGURATION LOOKED LIKE, BUT MR. SONNIER
03:23PM 18 TESTIFIED THAT THIS WAS STANDARD ACCORDING TO ALL OF THE
03:23PM 19 DOCUMENTATION HE LOOKED AT AS A BASIS FOR HIS OPINION, PRETTY
03:23PM 20 STANDARD MICROSOFT SQL SERVER, AND THIS IS WHAT A MICROSOFT SQL
03:23PM 21 SERVER LOOKS LIKE. THAT WAS ANOTHER THING THAT THERANOS, OF
03:23PM 22 COURSE, DEVELOPED TO STORE ALL OF THE PATIENT DATA, THE QUALITY
03:23PM 23 CONTROL INFORMATION, AND OTHER DATA ABOUT LABORATORY TESTING.

03:24PM 24 LET'S GO TO THE NEXT SLIDE.

03:24PM 25 THIS IS A PHOTO THAT YOU SAW WHEN MS. SPIVEY WAS

03:24PM 1 TESTIFYING SOME MANY MONTHS AGO. IT IS PART OF THERANOS'S
03:24PM 2 MANUFACTURING FACILITY. AND OBVIOUSLY THIS REPRESENTS A LOT OF
03:24PM 3 INVESTMENT TO DEVELOP A MANUFACTURING FACILITY OF THIS KIND OF
03:24PM 4 SCALE. AND YOU WOULD ONLY DO THAT IF YOU WERE EXPECTING TO
03:24PM 5 HAVE A RAMP UP TO NEEDING A LOT OF THERANOS EQUIPMENT TO USE IN
03:24PM 6 THE BUSINESS, OTHERWISE THERE'S NO POINT IN INVESTING IN THIS
03:24PM 7 TYPE OF SCALE OF MANUFACTURING.

03:24PM 8 OKAY. I MENTIONED DR. GIBBONS. AND WE'RE STILL IN 2010
03:24PM 9 HERE. DR. GIBBONS WAS A CHIEF SCIENTIST. IT IS TESTIMONY FROM
03:24PM 10 DAN EDLIN ABOUT WHO DR. GIBBONS WAS. HE WAS ONE OF THE CHIEF
03:25PM 11 SCIENTISTS AT THERANOS.

03:25PM 12 IN 2010, DR. GIBBONS SENT AN EMAIL TO MR. BALWANI, AND
03:25PM 13 HE'S ACTUALLY COPIED. IT'S TO ELIZABETH HOLMES AND OTHERS, AND
03:25PM 14 HE'S COPIED. BUT THIS IS WHAT MR. BALWANI IS INFORMED IN
03:25PM 15 OCTOBER OF 2010.

03:25PM 16 DR. GIBBONS, "I THINK WE HAVE DEMONSTRATED CAPABILITIES
03:25PM 17 FULLY EQUIVALENT TO LAB METHODS IN AREAS WHERE WE HAVE DONE
03:25PM 18 ASSAY DEVELOP. OUR IMMUNOASSAYS MATCH THE BEST THAT CAN BE
03:25PM 19 DONE IN CLINICAL LABS AND WORK WITH SMALL BLOOD SAMPLES.
03:25PM 20 GENERALLY OUR ASSAYS ARE FASTER BY A FACTOR OF THREE TO TEN
03:25PM 21 THAN KITS. OUR DYNAMIC RANGE CAPABILITY IS MORE THAN TEN
03:25PM 22 FOURTH FOLD BETTER THAN ANY OTHER SYSTEM. OUR SENSITIVITY IS
03:25PM 23 STATE OF THE ART.

03:25PM 24 "WE HAVE ALSO SHOWN ABILITIES TO WORK IN ALL ASSAY AREAS
03:25PM 25 (CYTOMETRY, NUCLEIC ACID, GENERAL CHEMISTRY, AND IMMUNOASSAY)."

03:25PM 1 AND THEN IT GOES ON, "COST SAVINGS WILL ACCRUE FROM SMALL
03:26PM 2 SAMPLE SIZE AND NO BLOOD DRAW REQUIREMENT."

03:26PM 3 SO MR. BALWANI IS INFORMED ABOUT THIS NOT BY MR. HOLMES
03:26PM 4 BUT BY THE CHIEF SCIENTIST, AT THE TIME DR. GIBBONS. THAT'S
03:26PM 5 WHAT DR. GIBBONS SAYS THE TECHNOLOGY IS CAPABLE OF.

03:26PM 6 SO YOU WONDER WHY MR. BALWANI WOULD WANT TO PUT HIS MONEY
03:26PM 7 INTO THIS COMPANY, AND HIS TIME, AND HIS YEARS, AND ALL OF HIS
03:26PM 8 EFFORTS.

03:26PM 9 SO WHAT HAPPENS? THERANOS HAS A MASSIVE RESEARCH AND
03:26PM 10 DEVELOPMENT EFFORT.

03:26PM 11 WE MENTIONED BEFORE, THE PURPOSE OF THIS IS TO DEVELOP
03:26PM 12 SMALL SAMPLE ASSAYS, THE ABILITY TO DO LOTS AND LOTS OF THESE
03:26PM 13 BLOOD TESTS ON A VERY SMALL SAMPLE. AND THEY HAVE A WORLD
03:26PM 14 CLASS SCIENTIFIC TEAM TO DO THAT.

03:26PM 15 YES, MR. BALWANI OVERSAW THE CLINICAL LAB EVENTUALLY FROM
03:26PM 16 AN OPERATIONAL STANDPOINT, BUT MR. BALWANI IS NOT THE SCIENTIST
03:26PM 17 WHO IS DEVELOPING THESE ASSAYS. THERE WERE PEOPLE WHO WERE
03:26PM 18 VERY DEDICATED WHO WERE WORKING ON THAT PROJECT.

03:26PM 19 LET'S LOOK AT EVEN WHAT DR. ROSENDORFF SAID ABOUT THIS. I
03:27PM 20 THINK AT THE TIME I DIDN'T WANT TO LIFT ALL OF THESE BINDERS
03:27PM 21 AGAIN BECAUSE I LIFTED THEM WITH MS. CHEUNG, BUT IT WOULD NOT
03:27PM 22 SURPRISE DR. ROSENDORFF TO LEARN THAT THESE ASSAY DEVELOPMENT
03:27PM 23 REPORTS FILLED SIX BINDERS, AND THAT WAS CONSISTENT WITH HIS
03:27PM 24 MEMORY OF BEING AT THERANOS THAT HE WORKED ON.

03:27PM 25 SO DR. ROSENDORFF KNEW THERE WAS A LOT -- A TON OF ASSAY

03:27PM 1 DEVELOPMENT WORK DONE.

03:27PM 2 AND THEN THERE WERE PARTICULAR EMAILS THAT MR. BALWANI WAS
03:27PM 3 INFORMED ABOUT. SO THIS IS CHINMAY PANGARKAR, DR. PANGARKAR,
03:27PM 4 ANOTHER PERSON WHO YOU DIDN'T HEAR FROM.

03:27PM 5 BUT HERE IN 2012 HE SAYS, "HI ELIZABETH.

03:27PM 6 "ASSAY DEVELOPMENT AND CLINICAL STUDY SUMMARY REPORTS FOR
03:27PM 7 ALL CYTOMETRY ASSAYS ARE LOCATED IN THE FOLLOWING LOCATION."

03:27PM 8 AND THEN HE SAYS, "SOME COMMENTS TO GO WITH THESE REPORTS:
03:27PM 9 "REPORTS HAVE BEEN WRITTEN TO DEMONSTRATE.

03:28PM 10 "THAT THERE IS SOUND SCIENCE AND METHOD DEVELOPMENT BEHIND
03:28PM 11 OUR ASSAYS.

03:28PM 12 "THAT OUR ASSAYS GIVE RESULTS THAT AGREE WITH PREDICATE
03:28PM 13 METHODS WITHIN CLIA PRESCRIBED LIMITS."

03:28PM 14 SO THIS IS WHAT MR. BALWANI -- OR RATHER DR. PANGARKAR IS
03:28PM 15 REPORTING AT THE TIME.

03:28PM 16 IN APRIL OF 2013 HERE'S ANOTHER EXHIBIT THAT MR. BALWANI
03:28PM 17 GETS INFORMATION ABOUT THIS PROCESS. THIS IS AN EMAIL FROM
03:28PM 18 DR. YOUNG TO MR. BALWANI AND DR. YOUNG REPORTS, "FOR THE TOP 75
03:28PM 19 WHOLE BLOOD TESTS, ONLY THE FOLLOWING ARE STILL UNDER
03:28PM 20 DEVELOPMENT," AND THEN HE LISTS A FEW THAT ARE UNDER
03:28PM 21 DEVELOPMENT.

03:28PM 22 SO TROPONIN AND MALARIA ARE NOT QUITE READY, BUT THEN
03:28PM 23 THERE ARE 75 OTHER WHOLE BLOOD TESTS THAT DR. YOUNG IS SAYING
03:28PM 24 ARE READY.

03:28PM 25 AND THEN HE SAYS, "THE FOLLOWING STILL NEED FINAL

03:28PM 1 INTEGRATION ON THE DEVICE."

03:29PM 2 SO WHENEVER THEY DEVELOP SMALL SAMPLE ASSAYS, NOW THEY
03:29PM 3 HAVE TO INTEGRATE THEM ONTO THE DEVICE, AND THERE ARE JUST A
03:29PM 4 FEW OF THOSE THAT ARE LISTED.

03:29PM 5 THEN DR. YOUNG GOES ON AND SAYS, "THE FLU TESTS AND STEP A
03:29PM 6 ARE 95 PERCENT COMPLETED. THEY ARE STILL COMPLETING THE
03:29PM 7 PRE-VALIDATION BEFORE MOVING THE TESTS TO CLIA FOR VALIDATION."

03:29PM 8 SO WHEN THE GOVERNMENT ASKS QUESTIONS OF WITNESSES ABOUT
03:29PM 9 HOW THE THERANOS DEVICE CAN ONLY DO 12 TESTS, THAT'S SIMPLY NOT
03:29PM 10 TRUE. IT CAN DO A LOT OF TESTS.

03:29PM 11 WHETHER THEY ACTUALLY PUT THOSE TESTS INTO THE CLIA LAB,
03:29PM 12 AS I'LL TALK ABOUT SOME MORE, THERE ARE BUSINESS DECISIONS THAT
03:29PM 13 GO INTO THAT.

03:29PM 14 BUT IN TERMS OF WHAT IT COULD DO, THE EVIDENCE IS THE
03:29PM 15 OPPOSITE OF WHAT THE GOVERNMENT IS TRYING TO SUGGEST IN THIS
03:29PM 16 CASE.

03:29PM 17 SO LET'S TALK SOME MORE ABOUT THE ASSAY DEVELOPMENT
03:29PM 18 PROCESS.

03:29PM 19 SO THIS IS AN EMAIL FROM SUREKHA GANGADKHEDKAR. AND SHE
03:29PM 20 WRITES ON AUGUST 24TH, 2013, TO DANIEL YOUNG AND
03:30PM 21 ADAM ROSENDORFF.

03:30PM 22 "ATTACHED ARE THE DEVELOPMENT REPORTS FOR TSH AND TPSA AND
03:30PM 23 THE VALIDATION PLAN FOR TSH."

03:30PM 24 SO THOSE ARE THE TWO ASSAYS THAT YOU HAVE HEARD ABOUT
03:30PM 25 DURING THE COURSE OF THE TRIAL, THYROID SPECIFIC HORMONE AND

03:30PM 1 THERANOS PROSTATE SPECIFIC-ANTIGEN, PSA.

03:30PM 2 AND THEN SHE GOES ON TO SAY, "AS DISCUSSED IN THE MEETING
03:30PM 3 WITH ELIZABETH, PLEASE REVIEW THE DATA IN THE DEVELOPMENT
03:30PM 4 REPORTS FOR USABILITY TOWARDS VALIDATION AND PROPOSE WHAT WILL
03:30PM 5 BE NEEDED FOR VERIFICATION FOR THE 3.5 SYSTEM AND THE
03:30PM 6 PRE-DILUTIONS."

03:30PM 7 SO WHAT IS GOING ON HERE, AND YOU HEARD ABOUT THIS FROM
03:30PM 8 DR. ROSENDORFF AMONG OTHERS, AND I THINK MS. CHEUNG AS WELL,
03:30PM 9 THAT THERE'S A PROCESS OF DEVELOPMENT AND ASSAYS ARE DEVELOPED
03:30PM 10 IN THE RESEARCH AND DEVELOPMENT LAB, BUT THAT'S NOT ENOUGH. TO
03:30PM 11 USE IT FOR PATIENT TESTING, YOU HAVE TO GO FURTHER AND DO THIS
03:30PM 12 CLIA VALIDATION PROCESS.

03:30PM 13 AND THIS IS JUST AN EXAMPLE OF THAT TECHNOLOGY DEVELOPED
03:31PM 14 IN R&D BEING -- STARTING TO BE TRANSFERRED TO THE CLINICAL LAB,
03:31PM 15 AND THIS IS IN AUGUST OF 2013 BEFORE THE WALGREENS LAUNCH.

03:31PM 16 TO SHOW YOU WHAT ONE OF THESE LOOK LIKE, THIS IS THE ASSAY
03:31PM 17 DEVELOPMENT REPORT FOR THE PSA ASSAY.

03:31PM 18 AND IF YOU GO TO THE NEXT PAGE, THE CONCLUSION IS THAT,
03:31PM 19 "WE HAVE SUCCESSFULLY DEVELOPED AN IMMUNOASSAY TO DETECT TOTAL
03:31PM 20 PROSTATE-SPECIFIC ANTIGEN (PSA) IN HUMAN SERUM AND PLASMA."

03:31PM 21 SO THIS IS JUST THE R&D SIDE. IN ORDER TO PUT THAT PSA
03:31PM 22 ASSAY INTO CLINICAL USE FOR PATIENTS, THERE HAS TO BE FURTHER
03:31PM 23 PROCESS, AND WE'LL SEE SOME OF THAT IN A MINUTE WHERE
03:31PM 24 DR. ROSENDORFF SIGNS OFF ON THESE VALIDATION REPORTS AND WHY HE
03:31PM 25 DID THAT.

03:31PM 1 OKAY. THE NEXT SLIDE.

03:31PM 2 THIS IS AN EMAIL, AND I'M JUST GOING THROUGH THE DIFFERENT
03:31PM 3 TYPES OF ASSAYS. YOU KNOW, WE'VE LOOKED AT CYTOMETRY, WE
03:31PM 4 LOOKED AT IMMUNOASSAYS. THIS HAS TO DO WITH TNAA, THERANOS
03:32PM 5 NUCLEIC ACID AMPLIFICATION. THIS IS LIKE YOUR PCR TEST
03:32PM 6 BASICALLY.

03:32PM 7 AND THERE'S AN UPDATE FROM DR. PATEL TO MR. BALWANI,
03:32PM 8 DR. YOUNG, AND DR. ROSENDORFF. AND HE'S GIVING A BRIEF UPDATE
03:32PM 9 TOWARDS THE JANUARY 31ST GOAL. "ASSAY DEVELOPMENT 76 ASSAYS
03:32PM 10 ARE COMPLETE AND 16 ARE IN PROGRESS. 5 OF 16 IN PROGRESS ARE
03:32PM 11 90 PERCENT COMPLETE. LDT VALIDATION, 13 ASSAYS, LDT VALIDATED
03:32PM 12 WITH FURTHER 4 -- 90 PERCENT DONE."

03:32PM 13 AND THEN THERE'S MORE THAT GOES ON.

03:32PM 14 SO THIS IS ABOUT NUCLEIC ACID AMPLIFICATION ASSAYS THAT
03:32PM 15 ARE BEING DEVELOPED AT THERANOS, RIGHT?

03:32PM 16 AND AGAIN, WE'LL TALK ABOUT THESE MORE. BUT WHY ARE THESE
03:32PM 17 NOT BEING PUT INTO THE CLIA LAB?

03:33PM 18 WELL, THERE'S A LOT OF REASONS, AND IT HAS TO DO WITH
03:33PM 19 WALGREENS'S RELATIONSHIP WITH THERANOS AND HOW THEY MUTUALLY
03:33PM 20 DECIDED TO GO WITH WHAT IS CALLED A PHASE I WHERE THEY WOULD
03:33PM 21 HAVE A CENTRAL LAB, THE BLOOD SAMPLES WOULD BE COLLECTED AT
03:33PM 22 WALGREENS AND TRANSPORTED TO A CENTRAL LABORATORY THAT THERANOS
03:33PM 23 RAN. AND IT WAS JUST NOT NECESSARY TO PUT ALL OF THESE ASSAYS
03:33PM 24 ONTO THE THERANOS ANALYZERS BECAUSE THEY WERE DESIGNED TO BE IN
03:33PM 25 THE FIELD. THEY WERE DESIGNED TO BE AT WALGREENS STORES,

03:33PM 1 PHYSICIAN OFFICES, MILITARY FIELD OFFICES, WHATEVER.

03:33PM 2 AND RUNNING A CENTRAL LAB WHERE YOU'RE TRYING TO COLLECT A
03:33PM 3 LOT OF SAMPLES FROM WALGREENS STORES AND BRINGING THEM TO A
03:33PM 4 CENTRAL PLACE, YOU NEED HIGHER THROUGHPUT. THAT'S NOT REALLY
03:33PM 5 WHAT THE THERANOS TECHNOLOGY WAS REALLY DESIGNED FOR.

03:33PM 6 AND ALTHOUGH THEY DID USE IT, ALL OF THE ASSAYS THAT THEY
03:33PM 7 COULD HAVE PUT ON THE DEVICE, THEY DID NOT ACTUALLY PUT ON THE
03:33PM 8 DEVICE BECAUSE THERE WAS GOING TO BE A PHASE II WHERE THEY TOOK
03:33PM 9 THE ASSAYS OR DEVICES AND PUT THEM IN OTHER WALGREENS STORES OR
03:34PM 10 OTHER FIELD LOCATIONS. AND THOSE ARE BUSINESS DECISIONS, AND
03:34PM 11 WE'LL SEE MORE ABOUT THAT IN A MINUTE.

03:34PM 12 OKAY. LET'S TALK MORE ABOUT THE THERANOS SCIENTIFIC TEAM
03:34PM 13 AND THE CLIA LAB.

03:34PM 14 SO THIS IS THE THERANOS SCIENTIFIC LEADERSHIP TEAM:
03:34PM 15 DANIEL YOUNG, A PH.D.; SURAJ SAKSENA, ANOTHER PH.D.;
03:34PM 16 CHINMAY PANGARKAR, ANOTHER PH.D.; NISHIT DOSHI, AGAIN ANOTHER
03:34PM 17 PH.D.; SUREKHA GANGADKHEDKAR, MASTERS; PAUL PATEL, PH.D.;
03:34PM 18 SHARADA SIVARAMAN, A PH.D.; AND GODFRED MASINDE, A PH.D.

03:34PM 19 THE GOVERNMENT DIDN'T CALL ANY OF THESE PEOPLE. SO IF YOU
03:34PM 20 WANTED TO KNOW WHAT THEY WERE DOING, YOU HAVEN'T HEARD IT IN
03:34PM 21 THIS CASE BECAUSE THE GOVERNMENT DIDN'T CALL THESE WITNESSES.

03:34PM 22 BUT THERE A LOT MORE SCIENTISTS. AND THESE ARE THE
03:34PM 23 LEADERSHIP TEAM THAT YOU'VE SEEN IN EMAILS, EVEN IF YOU DIDN'T
03:34PM 24 SEE THEM IN PERSON.

03:34PM 25 BUT THERE A LOT OF DEDICATED PEOPLE HERE AT THERANOS WHO

03:35PM 1 WERE WORKING ON THIS WHO ARE COMING TO WORK EVERY DAY DOING
03:35PM 2 THEIR JOBS. THERE'S SOME BIOS IN EVIDENCE OF SOME OF THOSE
03:35PM 3 PEOPLE JUST TO GO THROUGH THAT.

03:35PM 4 DR. YOUNG WORKED AT THERANOS. HE WAS AN ENGINEERING
03:35PM 5 DOCTORATE FROM M.I.T. IN THE FIELD OF BIOMEDICAL SCIENCES. HE
03:35PM 6 PUBLISHED OVER 20 SCIENTIFIC ARTICLES AND BOOK CHAPTERS. AND
03:35PM 7 HE WAS A LAB DIRECTOR IT SAYS THERE IN THE SCOTTSDALE ARIZONA
03:35PM 8 LAB.

03:35PM 9 IF YOU GO TO THE NEXT PAGE, IT GOES ON TO TALK ABOUT HOW
03:35PM 10 HE RECEIVED HIS PH.D., M.S., AND B.S. IN MECHANICAL ENGINEERING
03:35PM 11 FROM M.I.T.

03:35PM 12 THIS IS THE BIO FOR DR. SURAJ SAKSENA. AND IF YOU WANT TO
03:35PM 13 WRITE THIS DOWN, THIS IS ALL IN EXHIBIT 4528.

03:35PM 14 DR. SAKSENA HAD EXPERIENCE WITH THE AMERICAN HEART
03:36PM 15 ASSOCIATION AND POST-DOCTORAL FELLOW AT CORNELL, AND HE HAS A
03:36PM 16 PH.D. IN BIOCHEMISTRY AND BIOPHYSICS. HE WAS THE TECHNICAL
03:36PM 17 CONSULTANT AT THE ARIZONA LAB IT LISTS THERE.

03:36PM 18 DR. GODFRED MASINDE, TECHNICAL SUPERVISOR. AND I WON'T
03:36PM 19 READ THIS, BUT IT HAS HIS QUALIFICATIONS AND HIS BIO, WHICH YOU
03:36PM 20 CAN LOOK AT WHEN YOU HAVE THAT CHANCE LATER.

03:36PM 21 HODA ALAMDAR, TECHNICAL SUPERVISOR AND GENERAL SUPERVISOR
03:36PM 22 IS HER BIO THERE.

03:36PM 23 HERE'S THE BIO FOR GURBIR SIDHU, GENERAL SUPERVISOR.

03:36PM 24 AND THEN, OF COURSE, LANGLEY GEE, WHO AGAIN, YOU DIDN'T
03:36PM 25 HEAR FROM. BUT HE'S THE QUALITY CONTROL MANAGER THAT WAS HIRED

03:36PM 1 WHO WAS RESPONSIBLE FOR QUALITY CONTROL OF THE LABORATORY AT
03:36PM 2 THERANOS.

03:36PM 3 NOW, LET'S GO BACK TO DR. YOUNG FOR A MINUTE. SO
03:36PM 4 DR. YOUNG, AS DR. ROSENDORFF TESTIFIED HERE, HE WAS THE
03:37PM 5 VICE PRESIDENT OF THERANOS SYSTEMS, THAT WAS HIS TITLE, AND HE
03:37PM 6 HAD A HAND IN EVERYTHING REALLY. THAT'S WHAT DR. ROSENDORFF
03:37PM 7 SAID.

03:37PM 8 SO IT WOULD HAVE BEEN NICE TO KNOW WHAT DR. YOUNG HAD TO
03:37PM 9 SAY, BUT WE DIDN'T HEAR FROM HIM. AND HE WAS ON, AS I SAID
03:37PM 10 BEFORE, 78 EMAILS IN THIS CASE THAT CAME INTO EVIDENCE.

03:37PM 11 DR. YOUNG IS ON -- AND WE KNOW NOTHING ABOUT HOW HE WOULD
03:37PM 12 EXPLAIN THOSE OR WHAT HE WOULD SAY BECAUSE HE WASN'T CALLED.

03:37PM 13 SAME WITH MR. GEE, LONGLY GEE.

03:37PM 14 AND YOU MIGHT REMEMBER -- GO TO THE NEXT SLIDE.

03:37PM 15 ON DR. ROSENDORFF, WHO BY THE WAY CLAIMED THAT HE DIDN'T
03:37PM 16 HAVE ANY ABILITY TO HIRE PEOPLE, HE INTERVIEWED MR. GEE. HE
03:37PM 17 SPOKE HIGHLY OF HIM. HE RECOMMENDED HIM.

03:37PM 18 WHEN YOU GO TO THIS EXHIBIT 20304, YOU WILL SEE THAT
03:37PM 19 DR. ROSENDORFF THOUGHT THAT HE WOULD MAKE A VERY GOOD QUALITY
03:38PM 20 CONTROL MANAGER. AND SURE ENOUGH, MR. GEE WAS HIRED TO OVERSEE
03:38PM 21 THAT PROCESS.

03:38PM 22 AGAIN, WE DIDN'T HEAR FROM MR. GEE.

03:38PM 23 SO YOU HEARD ABOUT THE TITLE OF LAB DIRECTORS IN THIS
03:38PM 24 CASE. AND WHAT DOES A LAB DIRECTOR AT A CLIA LAB LIKE THERANOS
03:38PM 25 WAS RUNNING? WE DON'T HAVE TO GUESS AT THAT. THIS IS THE

ATTESTATION THAT DR. ROSENDORFF SIGNED ON NOVEMBER 25TH, 2013.

AND HE SAYS, "AS THE DIRECTOR OR CO-DIRECTOR," HE WAS THE DIRECTOR, "I ASSUME ALL DIRECTORSHIP RESPONSIBILITIES FOR CLIA AND STATE OF CALIFORNIA PURPOSES. I UNDERSTAND THAT AS A DIRECTOR OF THIS LABORATORY, I AM RESPONSIBLE FOR THE ACCURACY AND RELIABILITY OF ALL TESTING PERFORMED BY THE LABORATORY AND FOR ENSURING THAT THE LABORATORY MEETS ALL APPLICABLE CLIA AND STATE REQUIREMENTS AS STIPULATED IN BOTH FEDERAL AND CALIFORNIA LAWS."

THAT'S WHAT DR. ROSENDORFF SWORE TO WHEN HE FILLED OUT THIS ATTESTATION FOR THE THERANOS LAB.

AND AS YOU'LL SEE, HE TESTIFIED THAT HE FULFILLED THAT OATH. HE DID HIS BEST TO MAKE SURE THAT ACCURATE TESTING WAS BEING SENT OUT.

AND AS YOU'LL SEE WHEN WE GO THROUGH THIS, DR. ROSENDORFF SAID THAT HE NEVER BELIEVED THAT HE WAS SENDING OUT INACCURATE RESULTS AND THAT HE NEVER SIGNED VALIDATION REPORTS BECAUSE HE WAS BEING PRESSURED, AS THE GOVERNMENT SUGGESTED A FEW MINUTES AGO.

AND DR. ROSENDORFF, HE FOUGHT ME A LITTLE BIT ABOUT THIS AS I REMEMBER. BUT HE EVENTUALLY ADMITTED THAT A LAB DIRECTOR IS RESPONSIBLE FOR ABSOLUTELY EVERYTHING, AND THAT HE WAS, IN FACT, ATTESTING THAT HE WAS RESPONSIBLE FOR THE ACCURACY AND RELIABILITY OF ALL TESTING PERFORMED BY THE LABORATORY.

HE SAID YES.

03:39PM 1 AND IN TERMS OF THE DUTIES OF THE LAB DIRECTOR,

03:39PM 2 DR. PANDORI, WHO WAS CO-LABORATORY DIRECTOR FOR A WHILE, HE

03:40PM 3 SAID THAT UNTIL THE CLINICAL LABORATORY SIGNS OFF ON THE

03:40PM 4 DEVELOPED TESTS, LIKE THE THERANOS EDISON, THE TEST CANNOT BE

03:40PM 5 USED IN THE LAB?

03:40PM 6 HE SAID CORRECT.

03:40PM 7 IF YOU GO TO THE NEXT SLIDE.

03:40PM 8 THE CLIA LAB DIRECTOR IS RESPONSIBLE FOR THE QUALITY OF

03:40PM 9 THE LABORATORY TESTING PERFORMED WITHIN THAT LAB?

03:40PM 10 DR. PANDORI, OF COURSE, HAD TO AGREE TO THAT.

03:40PM 11 SO THAT IS WHAT A LAB DIRECTOR HAS TO DO. YOU CAN'T ALLOW

03:40PM 12 TESTING THAT ISN'T CORRECT. AND WE'LL SEE MORE IN A FEW

03:40PM 13 MINUTES OF WHAT DR. ROSENDORFF ACTUALLY SAID ABOUT WHY HE

03:40PM 14 AUTHORIZED CERTAIN TESTS TO GO INTO USE IN THE CLINICAL LAB.

03:40PM 15 ERIKA CHEUNG. ERIKA CHEUNG WAS AN ENTRY LEVEL EMPLOYEE AT

03:40PM 16 THERANOS. IT DOESN'T MEAN SHE SHOULDN'T BE LISTENED TO. IT

03:40PM 17 DOESN'T MEAN SHE SHOULDN'T BE RESPECTED.

03:40PM 18 I THINK THAT AS YOU SAW, SHE WAS LISTENED TO. SHE AND HER

03:40PM 19 FRIEND, TYLER SHULTZ, SENT AN EMAIL ABOUT SOME CONCERNS THAT

03:41PM 20 THEY HAD.

03:41PM 21 AND AS SHE TESTIFIED, DR. YOUNG SPENT A LOT OF TIME WITH

03:41PM 22 MR. SHULTZ EXPLAINING WHAT HE THOUGHT ABOUT THAT, NOT

03:41PM 23 MR. BALWANI. SO THAT WAS MS. CHEUNG.

03:41PM 24 YOU KNOW, HOWEVER SINCERE THAT SHE MAY BE, SHE WAS IN

03:41PM 25 FACT, AND I MEAN NO DISRESPECT, AN ENTRY LEVEL EMPLOYEE, DIDN'T

03:41PM 1 HAVE A SCIENTIFIC BACKGROUND THAT OTHERS HAD IN THE LAB.

03:41PM 2 BUT WHAT SHE DID KNOW, JUST FROM HER OWN EXPERIENCE AT
03:41PM 3 THERANOS, WAS THAT BEFORE AN ASSAY COULD BE PUT IN THE CLINICAL
03:41PM 4 LAB, IT HAD TO GO THROUGH THIS VALIDATION REPORT PROCESS. SO
03:41PM 5 SHE, OF COURSE, KNEW THAT.

03:41PM 6 AND DR. ROSENDORFF TALKED MORE ABOUT THIS VALIDATION
03:41PM 7 PROCESS. HE TESTIFIED THAT WHEN HE SIGNED VALIDATION REPORTS,
03:41PM 8 IT WAS NECESSARY FOR HIM TO REVIEW THE DATA THAT WAS PREPARED
03:41PM 9 FOR THE PURPOSE OF VALIDATION.

03:41PM 10 HE SAID YES.

03:41PM 11 THE VALIDATION WOULD INCLUDE TESTS TO DETERMINE WHETHER
03:41PM 12 THE DEVICE WAS ACCURATE, THE ASSAY WAS ACCURATE?

03:41PM 13 HE SAID YES.

03:41PM 14 WHETHER IT WAS PRECISE.

03:41PM 15 HE SAID YES.

03:42PM 16 WHETHER THERE WAS APPROPRIATE SENSITIVITY.

03:42PM 17 HE SAID YES.

03:42PM 18 SO THOSE WERE SOME OF THE THINGS THAT DR. ROSENDORFF
03:42PM 19 TESTIFIED HE HAD TO REVIEW IN THE DATA BEFORE HE COULD SIGN ONE
03:42PM 20 OF THOSE VALIDATION REPORTS.

03:42PM 21 AND DR. ROSENDORFF FURTHER TESTIFIED, AND YOU HAVE TO BE
03:42PM 22 SATISFIED THAT ALL THOSE ARE MET BEFORE YOU PUT YOUR SIGNATURE
03:42PM 23 ON THE DOCUMENT?

03:42PM 24 HE SAID YES.

03:42PM 25 BUT YOU SIGNED THEM BECAUSE THEY WERE VALID, NOT BECAUSE

03:42PM 1 OF ANY PRESSURE THAT WAS PUT ON YOU; CORRECT?

03:42PM 2 AND DR. ROSENDORFF TESTIFIED UNDER OATH, YES.

03:42PM 3 NOW, LET'S TALK ABOUT THE PRESSURE FOR A MOMENT. OF
03:42PM 4 COURSE, THERE IS PRESSURE. ANY COMPANY THAT IS TRYING TO
03:42PM 5 LAUNCH A NEW SERVICE, IN THIS CASE THERANOS'S SERVICE AT
03:42PM 6 WALGREENS, IS GOING TO WANT TO GET THAT LAUNCH DONE.

03:42PM 7 I MEAN, WE'VE HEARD -- USE YOUR COMMON SENSE. PEOPLE
03:42PM 8 STAYING UP ALL NIGHT TO GET THE PRODUCT READY AND ALL OF THAT
03:42PM 9 SORT OF THING. SO THERE'S ALWAYS GOING TO BE PRESSURE,
03:42PM 10 HOPEFULLY ENTHUSIASM WHEN COMPANIES ARE LAUNCHING SOMETHING
03:42PM 11 NEW.

03:42PM 12 BUT THIS IS BLOOD TESTING. AND IT'S IMPORTANT TO TRY TO
03:43PM 13 GET IT RIGHT.

03:43PM 14 AND DR. ROSENDORFF TESTIFIED THAT HE WASN'T -- YES, HE
03:43PM 15 FELT PRESSURE, BUT HE WAS NOT SIGNING THESE VALIDATION REPORTS
03:43PM 16 BECAUSE OF PRESSURE.

03:43PM 17 HE TESTIFIED UNDER OATH RIGHT THERE IN FRONT OF YOU THAT
03:43PM 18 HE DID THIS BECAUSE THEY WERE VALID, THAT'S WHY HE SIGNED THE
03:43PM 19 REPORTS.

03:43PM 20 AND HE SIGNED A LOT OF REPORTS. SO DR. ROSENDORFF SIGNED
03:43PM 21 57 OF THESE REPORTS. THESE ARE CLIA VALIDATION REPORTS. EVERY
03:43PM 22 SINGLE ONE OF THOSE HAVE QUITE A FEW SIGNATURES, BUT ONE OF
03:43PM 23 THEM IS DR. ROSENDORFF'S WHERE HE'S SAYING, YES, THIS HAS GOT
03:43PM 24 MY STAMP OF APPROVAL, THIS TEST CAN GO INTO USE IN THE PATIENT
03:43PM 25 CLINICAL LAB.

03:43PM 1 AND YOU CAN SEE HE SIGNS THEM. THESE ARE IN CHRONOLOGICAL
03:43PM 2 ORDER. I'LL LEAVE THIS UP ON THE SCREEN FOR A MINUTE IF YOU
03:43PM 3 WANT TO WRITE DOWN SOME OF THE EXHIBIT NUMBERS, BUT IT GOES
03:43PM 4 FROM SEPTEMBER 30TH, 2013, WHEN THYROID STIMULATING HORMONE AND
03:44PM 5 PSA AND VITAMIN D WERE SIGNED, ALL OF THE WAY THROUGH
03:44PM 6 SEPTEMBER 18TH, 2014. SO IT'S ALMOST A YEAR. SO A FEW DAYS
03:44PM 7 SHORT OF A YEAR.

03:44PM 8 AND IF DR. ROSENDORFF THOUGHT IN ALL OF THAT TIME THAT
03:44PM 9 THERE WAS SOME FUNDAMENTAL PROBLEM WITH THE EDISON DEVICE, AND
03:44PM 10 THE MODIFIED PREDICATES, THIS INCLUDES BOTH MODIFIED PREDICATES
03:44PM 11 AND EDISON, IF DR. ROSENDORFF THOUGHT THERE WAS SOME
03:44PM 12 FUNDAMENTAL PROBLEM, HE COULD NOT, WOULD NOT HAVE SIGNED THESE
03:44PM 13 VALIDATION REPORTS ONE AFTER THE OTHER AFTER THE OTHER. THAT
03:44PM 14 HAS TO BE THE CASE.

03:44PM 15 LET ME POINT OUT A FEW OF THEM TO YOU.

03:44PM 16 THERE'S PSA, WHICH WAS THE SUBJECT OF SOME DISCUSSION WITH
03:44PM 17 DR. BURNES AND DR. ELLSWORTH. THAT'S THE EXHIBIT ON THE RIGHT,
03:44PM 18 AND THAT'S EXHIBIT 9387, THAT IS THE PSA VALIDATION REPORT WITH
03:45PM 19 DR. ROSENDORFF'S SIGNATURE, AND ALSO DR. YOUNG, AND ALSO
03:45PM 20 EVENTUALLY DR. DHAWAN.

03:45PM 21 THE ONE ON THE LEFT IS THE ASSAY VALIDATION REPORT FOR
03:45PM 22 HCG. THAT'S THE TEST THAT IS DESIGNED TO ASSESS PREGNANCY AND
03:45PM 23 THE VIABILITY OF A PREGNANCY. THAT IS EXHIBIT 9196. THAT WAS
03:45PM 24 SIGNED ON MARCH 19TH, 2014, AND WE'LL TALK ABOUT THAT SOME
03:45PM 25 MORE.

03:45PM 1 AND THEN THE MIDDLE ONE, BECAUSE YOU'VE HEARD ABOUT THE
03:45PM 2 GROUP CALLED THE ISE ASSAYS, ISE. POTASSIUM IS ONE OF THOSE
03:45PM 3 ISE ASSAYS. AND THAT'S THE VALIDATION REPORT SIGNED BY
03:45PM 4 DR. ROSENDORFF AND OTHERS ON MARCH 24TH, 2014. THAT'S
03:45PM 5 EXHIBIT 9315.

03:45PM 6 OKAY. I WAS SAYING A FEW MINUTES AGO, AND YOU'VE ALSO
03:45PM 7 HEARD FROM THE GOVERNMENT, THAT THERE WAS THIS LAUNCH, AT LEAST
03:45PM 8 THE INITIAL LAUNCH OF THERANOS BLOOD TESTING SERVICES AT
03:45PM 9 WALGREENS IN SEPTEMBER OF 2013.

03:45PM 10 AND IT'S IMPORTANT JUST TO TALK ABOUT THIS FOR A MINUTE
03:45PM 11 BECAUSE THIS IS, OF COURSE, THE BEGINNING OF THERANOS'S ACTUAL
03:46PM 12 PATIENT TESTING THAT YOU'VE HEARD ABOUT IN THIS CASE. I WANT
03:46PM 13 TO JUST EXPLAIN TO YOU WITH THE EVIDENCE WHAT HATCHED AND WHAT
03:46PM 14 DIDN'T HAPPEN.

03:46PM 15 SO THIS WAS THE INITIAL ANNOUNCEMENT. IT'S A
03:46PM 16 WALGREENS-THERANOS ANNOUNCEMENT. NOT JUST A THERANOS
03:46PM 17 ANNOUNCEMENT.

03:46PM 18 AND THE ANNOUNCEMENT IS THAT THERANOS AND WALGREENS
03:46PM 19 ANNOUNCED A LONG-TERM PARTNERSHIP TO BRING ACCESS TO THERANOS'S
03:46PM 20 NEW LAB TESTING SERVICE THROUGH WALGREENS PHARMACIES
03:46PM 21 NATIONWIDE.

03:46PM 22 AND THEN IT SAYS, THE SAMPLES ARE EITHER TAKEN FROM A TINY
03:46PM 23 FINGERSTICK OR A MICRO-SAMPLE TAKEN FROM TRADITIONAL METHODS.

03:46PM 24 AND WE HEARD ABOUT THIS TYPE OF VENOUS DRAW AND IT'S
03:46PM 25 SOMETIMES CALLED A BUTTERFLY NEEDLE. I THINK MR. JHAVERI

03:46PM 1 REFERRED TO IT AS A PEDIATRIC NEEDLE. IT'S A SMALLER AMOUNT
03:46PM 2 BUT IT'S STILL A VENOUS DRAW.

03:46PM 3 AND THERANOS RIGHT FROM THE BEGINNING WITH WALGREENS WAS
03:46PM 4 TELLING THE WORLD IN THIS PRESS RELEASE THAT IT WOULDN'T JUST
03:46PM 5 BE FINGERSTICK. IT WOULD ALSO BE THESE TRADITIONAL METHODS,
03:46PM 6 THESE VENOUS DRAWS. SO THAT'S HOW IT STARTS.

03:46PM 7 NOW, DR. ROSENDORFF SAID THAT HE HAD SOME CONCERNS. AND I
03:47PM 8 THINK THE GOVERNMENT SHOWED YOU THIS DURING THE CLOSING EARLIER
03:47PM 9 TODAY.

03:47PM 10 SO DR. ROSENDORFF AT THE BOTTOM THERE, IF WE GO TO THE
03:47PM 11 RIGHT HE SAYS, "I WOULD LIKE US TO BE THE BEST THAT WE CAN BE.
03:47PM 12 A FEW MORE WEEKS TO SORT THROUGH THESE MEDICAL AND LOGISTICAL
03:47PM 13 ISSUES, AND GETTING THE MORE LEVEL OF TRAINING AND STAFFING
03:47PM 14 WOULD HELP US TREMENDOUSLY."

03:47PM 15 SO DR. ROSENDORFF SAYS HE NEEDS MORE TIME, AND HE WANTS TO
03:47PM 16 GET IT RIGHT. THAT SEEMS LIKE A PERFECTLY LEGITIMATE
03:47PM 17 REASONABLE THING TO SAY.

03:47PM 18 AND THEN HE SAYS, IF YOU GO UP, WHAT WERE HIS CONCERNS?
03:47PM 19 HE HAD SOME MEDICAL CONCERNS AND SOME OPERATIONAL CONCERNS.

03:47PM 20 AND HERE ARE THE MEDICAL CONCERNS. ONE IS ABOUT GLUCOSE,
03:47PM 21 AND HE HAS SOME ISSUES WITH GLUCOSE. AND THE NEXT ONE IS ABOUT
03:47PM 22 SODIUM, AND HE HAS SOME ISSUES WITH SODIUM.

03:47PM 23 NOW, WHAT DOES MR. BALWANI DO IN THE FACE OF DR.
03:47PM 24 ROSENDORFF'S CONCERNS? DOES HE SAY, "TOO BAD, DR. ROSENDORFF,
03:47PM 25 WE'RE GOING FORWARD ANYWAY? YOU KNOW, I DON'T CARE ABOUT YOUR

03:48PM 1 CONCERNS, WE'RE GOING TO OFFER THE SODIUM TEST ANYWAY?"

03:48PM 2 NO. MR. BALWANI SAYS TO MS. HOLMES, "WE WILL TALK TO HIM.

03:48PM 3 "I ASSUME WE CAN USE SIEMENS CHEMISTRY FOR GLUCOSE AND

03:48PM 4 SODIUM? IF YES, THEN WE SHOULD."

03:48PM 5 SO MR. BALWANI'S INTEREST IS NOT TO PUT AN ASSAY ONLINE OR

03:48PM 6 TO SOMEHOW FORCE THAT WHEN DR. ROSENDORFF IS SAYING IT'S NOT

03:48PM 7 READY. HE IS SAYING, OKAY, LET'S JUST USE COMMERCIAL DEVICES

03:48PM 8 UNTIL WE FEEL LIKE WE'RE READY.

03:48PM 9 THEN AS FOR OPERATIONAL, HE ADDRESSES THAT, TOO. HE SAID,

03:48PM 10 WELL, WE'RE GOING TO LIMIT THE NUMBER OF SAMPLES UNTIL WE KIND

03:48PM 11 OF GET OUR FEET WET HERE ON UNDERSTANDING HOW THIS PROCESS

03:48PM 12 WORKS. SO HE'S NOT GOING TO OVERLOAD THE LAB WITH LOTS OF

03:48PM 13 SAMPLES.

03:48PM 14 SO MR. BALWANI CERTAINLY TAKES DR. ROSENDORFF SERIOUSLY

03:48PM 15 AND DOESN'T TRY TO FORCE ANYTHING THERE.

03:48PM 16 BUT LET'S GO FURTHER.

03:48PM 17 THIS IS WHAT DR. ROSENDORFF SAID ABOUT THIS ON DIRECT WHEN

03:48PM 18 THE GOVERNMENT QUESTIONED HIM.

03:48PM 19 HE SAID, "IT WAS EXTREMELY RUSHED AND HURRIED. THERE WAS

03:48PM 20 IMMENSE PRESSURE PUT ON R&D AND THE LAB TECHS AND MYSELF TO GET

03:49PM 21 THINGS VALIDATED AND GENERATE DATA."

03:49PM 22 SO THAT'S IF WE HAD DONE NOTHING, WE HAD DONE NO CROSS,

03:49PM 23 SHOWN NO EXHIBITS, THAT'S WHAT DR. ROSENDORFF'S TESTIMONY WAS.

03:49PM 24 AND THEN HE SAYS ABOUT THIS VERY EMAIL THAT I JUST SHOWED

03:49PM 25 YOU, "I WAS ASKING FOR MORE TIME TO MAKE SURE THAT THE ASSAYS

03:49PM 1 WERE MEDICALLY -- OF MEDICAL VALUE, AND THAT THERE WAS RIGHT
03:49PM 2 LEVEL OF TRAINING AND STAFFING IN THE LABORATORY TO RUN THOSE
03:49PM 3 TESTS.

03:49PM 4 "IN OTHER WORDS, WERE YOU ASKING TO DELAY THE COMMERCIAL
03:49PM 5 LAUNCH OF THE COMPANY'S TESTING?

03:49PM 6 "CORRECT."

03:49PM 7 SO THE PICTURE THE GOVERNMENT WAS TRYING TO PAINT THERE IS
03:49PM 8 DR. ROSENDORFF WAS RUSHED, HE'S PRESSURED, HE IS NOT READY, HE
03:49PM 9 WANTS A DELAY, AND SOMEHOW HE'S NOT GETTING THAT, AND HE'S
03:49PM 10 BEING FORCED TO DO THINGS AGAINST HIS WELL OR THAT HE'S NOT
03:49PM 11 READY FOR.

03:49PM 12 WELL, NOTHING, NOTHING COULD BE FURTHER FROM THE TRUTH.
03:49PM 13 AND LET'S LOOK AT THE EXHIBITS THAT THE GOVERNMENT DIDN'T SHOW
03:49PM 14 YOU.

03:49PM 15 SO, FIRST OF ALL, WHAT HAPPENED IN SEPTEMBER? THERE WAS
03:49PM 16 NO RUSH LAUNCH INCLUDING ASSAYS THAT DR. ROSENDORFF WASN'T
03:50PM 17 HAPPY WITH.

03:50PM 18 ON SEPTEMBER 11TH, 2013, THERE'S AN EMAIL FROM THERANOS
03:50PM 19 HUMAN RESOURCES TO ALL THERANOS EMPLOYEES. AND IT SAYS, "ALL,
03:50PM 20 "AS MENTIONED IN OUR ALL EMPLOYEE MEETING, WE ARE NOW
03:50PM 21 OFFERING FREE SCREENINGS TO ALL THERANOS EMPLOYEES, FRIENDS,
03:50PM 22 AND FAMILY."

03:50PM 23 AND THEN AT THE VERY BOTTOM PARAGRAPH IT SAYS, "STARTING
03:50PM 24 TODAY, ALL EMPLOYEES, FRIENDS AND FAMILY WILL BE ABLE TO GO TO
03:50PM 25 OUR WELLNESS CENTER AT THE DOWNTOWN PALO ALTO WALGREENS

03:50PM 1 LOCATION AND RECEIVE A VARIETY OF TESTS SO EVERYONE GETS TO SEE
03:50PM 2 OUR FIRST STORE. THE FIRST PANEL WE ARE OFFERING IS A COMPLETE
03:50PM 3 BLOOD COUNT WITH HBA1C TEST. WE WILL BE OFFERING DIFFERENT
03:50PM 4 PANELS OVER THE COMING DAYS AND WEEKS."

03:50PM 5 SO THERE'S NO SODIUM TEST, NO GLUCOSE TEST. NO ONE IS
03:50PM 6 FORCING ROSENDORFF TO DO THAT WHEN HE'S NOT READY.

03:50PM 7 AND THE GOVERNMENT DIDN'T SHOW YOU THAT EXHIBIT BECAUSE
03:50PM 8 THEY HAVE A STORY THEY WANT TO TELL YOU ABOUT ROSENDORFF BEING
03:50PM 9 PRESSURED AND RUSHED, WHICH JUST IS NOT THE CASE.

03:51PM 10 AND THEN YOU CAN SEE IN THE NEXT DOCUMENT, THE FLYER THAT
03:51PM 11 WENT OUT. FREE HEALTH SCREENING, AGAIN, COMPLETE BLOOD COUNT
03:51PM 12 AND DIABETES, THAT IS THE HBAIC TEST AT THIS 300 UNIVERSITY
03:51PM 13 WALGREENS.

03:51PM 14 IN FACT, AS THE GOVERNMENT SHOWED YOU THIS EXHIBIT, 4533,
03:51PM 15 THE EARLIEST EDISON TEST THAT WENT ONLINE WAS NOVEMBER 6TH OF
03:51PM 16 2013.

03:51PM 17 SO THERE'S NO TESTING GOING ON WHERE DR. ROSENDORFF IS
03:51PM 18 FEELING PRESSURED.

03:51PM 19 NOW, WHAT HAPPENED TO SODIUM IN PARTICULAR? THIS WAS IN
03:51PM 20 THE EMAIL THAT I SHOWED YOU A FEW MINUTES AGO. DR. ROSENDORFF
03:51PM 21 HAD A CONCERN ABOUT SODIUM.

03:51PM 22 HE DOESN'T SIGN THE SODIUM VALIDATION REPORT UNTIL MARCH,
03:51PM 23 MARCH 24TH, 2014. ANOTHER EXHIBIT THAT THE DEFENSE WOULD HAVE
03:51PM 24 TO SHOW YOU TO TAKE AWAY THE FALSE IMPRESSION THAT
03:52PM 25 DR. ROSENDORFF WAS BEING FORCED TO PUT SODIUM ONLINE. HE

03:52PM 1 DOESN'T SIGN THE VALIDATION REPORT UNTIL MARCH.

03:52PM 2 SO HE HAD MONTHS AND MONTHS TO BE READY, TO FEEL
03:52PM 3 COMFORTABLE BEFORE HE PUT HIS SIGNATURE ON THIS VALIDATION
03:52PM 4 REPORT ALLOWING THAT SODIUM TEST TO GO FORWARD.

03:52PM 5 AND YOU KNOW FROM VARIOUS WITNESSES THAT'S WHAT HAD TO
03:52PM 6 HAPPEN BEFORE A TEST COULD GO FORWARD.

03:52PM 7 OKAY. I WANT TO SHOW YOU MORE OF THIS TYPE OF MISLEADING
03:52PM 8 TESTIMONY. SO LET'S LOOK AT THIS SEQUENCE.

03:52PM 9 SO ON SEPTEMBER 7TH, 2013, ADAM ROSENDORFF WRITES AN EMAIL
03:52PM 10 TO DR. YOUNG, DR. SIVARAMAN, TO ELIZABETH HOLMES, AND
03:52PM 11 SUREKHA GANGADKHEDKAR, AND HE SAYS -- AND THIS IS WITH REGARD
03:52PM 12 TO THE ASSAYS VITAMIN D AND TSH.

03:52PM 13 HE SAYS, "THANKS -- THE DATA LOOKS GREAT. THE
03:52PM 14 ACCURACY/BIAS PLOT COMPARING THE EDISON THE 3.5 WITH PREDICATE
03:53PM 15 (VITAMIN D AND TSH) ARE EXCELLENT."

03:53PM 16 THAT'S WHAT DR. ROSENDORFF SAYS.

03:53PM 17 AND, IN FACT, AS WE SAW BEFORE, HE SIGNS THOSE TWO
03:53PM 18 VALIDATION REPORTS ON SEPTEMBER 30TH, 2013, BUT THE EVIDENCE IS
03:53PM 19 THAT THEY DIDN'T GO INTO CLINICAL USE RIGHT AT THAT TIME.

03:53PM 20 BUT DR. ROSENDORFF THINKS IT LOOKS GREAT. OKAY.

03:53PM 21 BUT THEN A LITTLE BIT LATER DR. ROSENDORFF HAS SOME
03:53PM 22 ISSUES. AND HERE'S WHAT HAPPENS. SO, MR. BALWANI WRITES AN
03:53PM 23 EMAIL TO DR. ROSENDORFF ON NOVEMBER 7TH, 2013.

03:53PM 24 HE SAYS, "ADAM.

03:53PM 25 "WE WOULD LIKE TO OPEN OUR 300 UNIVERSITY AVENUE STORE TO

03:53PM 1 THE PUBLIC THIS COMING MONDAY. WE FEEL CONFIDENT THAT WE CAN
03:53PM 2 HANDLE ABOUT 30 SAMPLES/DAY FROM THIS LOCATION AT THIS POINT.
03:54PM 3 AND IT HAS BEEN 2 MONTHS SINCE WE HAVE BEEN OUT IN WAG. IT'S
03:54PM 4 TIME TO GO LIVE."

03:54PM 5 AND DOCTOR -- I'M SORRY, MR. BALWANI SAYS, "I WOULD LIKE
03:54PM 6 TO ASK AT THIS TIME IF YOU HAVE A REASON TO THINK WE NEED MORE
03:54PM 7 TIME OR TEST OUT SOMETHING THAT WE HAVEN'T THOUGHT ABOUT."

03:54PM 8 SO MR. BALWANI IS NOT SAYING I DON'T CARE WHAT YOU THINK,
03:54PM 9 DR. ROSENDORFF, LET'S GO FORWARD.

03:54PM 10 HE SAYS, TELL ME IF YOU NEED MORE TIME BECAUSE WE WOULD
03:54PM 11 LIKE TO GET THIS GOING.

03:54PM 12 AND AS THE COO AND PRESIDENT OF THE COMPANY, OF COURSE HE
03:54PM 13 WANTS TO GET THE PROJECT GOING, BUT HE'S ASKING DR. ROSENDORFF
03:54PM 14 WHAT DO YOU THINK?

03:54PM 15 AND DR. ROSENDORFF RESPONDS. HE SAYS, "SUNNY,

03:54PM 16 "THIS IS VERY EXCITING THAT WE ARE BROADENING OUR TESTING
03:54PM 17 TO A WIDER BASE.

03:54PM 18 "THERE ARE A FEW ISSUES THAT NEED TO BE ADDRESSED."

03:54PM 19 AND LET ME GO TO THE MEDICAL SCIENTIFIC ISSUES.

03:54PM 20 WHAT DOES DR. ROSENDORFF SAY? HE SAYS, "AS COMMUNICATED
03:54PM 21 IN PREVIOUS EMAILS, THE SENSITIVITY OF VITAMIN D, TSH, AND
03:54PM 22 POSSIBLY CTNI ASSAYS IS NOT WHERE WE WANT IT TO BE."

03:55PM 23 AND THEN HE EXPLAINS WHAT HE MEANS BY THAT.

03:55PM 24 SO DR. ROSENDORFF IS SPECIFICALLY SAYING, YOU KNOW, I HAVE
03:55PM 25 SOME ISSUES WITH VITAMIN D, TSH, CTNI POSSIBLY.

03:55PM 1 SO WHAT HAPPENS? DOES MR. BALWANI SAY I DON'T CARE, WE'RE
03:55PM 2 DOING THIS ANY WAY? NO.

03:55PM 3 DR. SIVARAMAN SENDS AN EMAIL TO DR. ROSENDORFF AND
03:55PM 4 DR. YOUNG ABOUT TWO WEEKS LATER AND SAID, "HI ADAM,
03:55PM 5 "PLEASE FIND ATTACHED THE UPDATED/REVISED VITAMIN D AND
03:55PM 6 TSH REPORT WITH THE REPEAT OF THE ANALYTICAL SENSITIVITY
03:55PM 7 EXPERIMENTS, THE DATA OF WHICH WAS SHARED WITH YOU IN OUR LAST
03:55PM 8 MEETING."

03:55PM 9 SO DR. ROSENDORFF COMPLAINED THAT THERE MIGHT BE A PROBLEM
03:55PM 10 WITH SENSITIVITY FOR THESE ASSAYS, VITAMIN D AND TSH, AND THE
03:55PM 11 SCIENTIFIC TEAM SPRINGS INTO ACTION AND GETS HIM THE DATA, NOT
03:55PM 12 MR. BALWANI BUT DR. SIVARAMAN IN THIS CASE, GETS DR. ROSENDORFF
03:55PM 13 THE DATA THAT HE WANTED.

03:56PM 14 AND THEN WHAT HAPPENS?

03:56PM 15 DR. ROSENDORFF SAYS, "HI SHARADA," THAT'S DR. SIVARAMAN,
03:56PM 16 "THE NEW VITAMIN D REPORT LOOKS GOOD -- 2 MINOR POINTS."

03:56PM 17 SO DR. ROSENDORFF'S ISSUES WERE ADDRESSED. NO ONE WAS
03:56PM 18 FORCING HIM TO PUT ASSAYS ONLINE IN THE CLIA LAB THAT WEREN'T
03:56PM 19 RIGHT.

03:56PM 20 THE THING IS, WE SHOWED YOU THESE DOCUMENTS. THE
03:56PM 21 GOVERNMENT JUST SHOWED YOU DR. ROSENDORFF RAISED A PROBLEM, BUT
03:56PM 22 NEVER SHOWED YOU WHAT THE SOLUTION WAS WITH SODIUM OR TSH OR
03:56PM 23 VITAMIN D. THE DEFENSE HAD TO DO WITH IT NO BURDEN OF PROOF.

03:56PM 24 SO THEN WHAT ELSE HAPPENS?

03:56PM 25 MR. BALWANI WRITES, AND HE SENDS IT TO DR. ROSENDORFF ON

03:56PM 1 NOVEMBER 11TH, 2013, "PLEASE NOTE THAT SINCE THE LOCAL MARKET
03:56PM 2 NOW ALREADY KNOWS THAT WE ARE IN ARIZONA, WE ARE ANNOUNCING
03:56PM 3 PRESENCE OF 2 STORES IN PHOENIX TOMORROW. WE WILL STILL
03:56PM 4 CONTINUE TO MODULATE THE NUMBER OF SAMPLES FROM THERE SO THAT
03:57PM 5 THE TOTAL NUMBER OF SAMPLES THIS MONTH STILL STAYS BELOW 100
03:57PM 6 PER DAY." THAT IS TO ADDRESS THE OPERATIONAL CONCERNS AND NOT
03:57PM 7 TO OVERWHELM ANYONE.

03:57PM 8 AND WHAT IS DR. ROSENDORFF'S RESPONSE? NOT I HAVE
03:57PM 9 ADDITIONAL CONCERNS, I FEEL PRESSURED, I'M NOT READY. HE SAYS,
03:57PM 10 "EXCELLENT."

03:57PM 11 SO WHAT HAPPENED NEXT?

03:57PM 12 NOW WE'RE TALKING ABOUT THE PUBLIC LAUNCH. SO WE HAVE TO
03:57PM 13 SHOW YOU THAT THERE WAS A SOFT LAUNCH OF FRIENDS AND FAMILY
03:57PM 14 WITH JUST A COUPLE OF ASSAYS AND THEN IN NOVEMBER THAT WAS WHEN
03:57PM 15 THE PUBLIC LAUNCH ACTUALLY OCCURRED.

03:57PM 16 SO THIS BUSINESS THAT THE GOVERNMENT IS TRYING TO SELL YOU
03:57PM 17 THAT HE WAS PRESSURED AND NEEDED MORE TIME AND DIDN'T GET IT.

03:57PM 18 NO. HE GOT THE TIME THAT HE NEEDED. AND THIS IS THE
03:57PM 19 ANNOUNCEMENT OF THE PUBLIC LAUNCH, AND THIS IS CELEBRATING THE
03:57PM 20 OPENING OF THE THERANOS WELLNESS CENTERS LOCATED AT WALGREENS
03:58PM 21 STORES IN PHOENIX, AND AT THAT POINT THEY OPENED TWO STORES.

03:58PM 22 AGAIN, IT TALKS ABOUT MICRO SAMPLES COLLECTED BY CERTIFIED
03:58PM 23 PHLEBOTOMISTS OR TRAINED WALGREENS TECHNICIANS ARE TAKEN FROM
03:58PM 24 EITHER A TINY FINGERSTICK OR TRADITIONAL METHODS.

03:58PM 25 SO THERE'S NO PROMISE THAT IT'S ALWAYS GOING TO BE

03:58PM 1 FINGERSTICK. THERE'S ALSO THE TRADITIONAL METHODS.

03:58PM 2 AND WHEN YOU THINK ABOUT IT, THIS IDEA THAT PATIENTS WERE
03:58PM 3 DEFRAUDED SOMEHOW BECAUSE THEY GOT VENOUS DRAW AND NOT
03:58PM 4 FINGERSTICK, I THINK YOU KNOW IF YOU GET A VENOUS DRAW. IF
03:58PM 5 YOU'RE IN THE WALGREENS STORE AND SOMEONE WANTS TO STICK A
03:58PM 6 NEEDLE IN YOUR ARM, YOU COULD SAY NOT ME, I AM LEAVING, RIGHT?

03:58PM 7 SO THERE'S NO FRAUD THERE. AND IT'S ACTUALLY RIGHT IN
03:58PM 8 THE PRESS RELEASE AS TO WHAT IS GOING ON HERE. THERANOS DIDN'T
03:58PM 9 HAVE EVERY SINGLE ASSAY ON FINGERSTICK.

03:58PM 10 AND WHAT WE WILL TALK ABOUT MORE, THE GOAL HERE, AND THERE
03:58PM 11 ARE SOME EMAILS WE WILL SEE LATER ON, WAS TO GET THE MOST
03:58PM 12 COMMONLY ORDERED TESTS ONTO FINGERSTICK SO PEOPLE WOULD HAVE
03:58PM 13 THAT EXPERIENCE. BUT NOT COST EFFECTIVE TO TRY TO PUT EVERY
03:59PM 14 ASSAY, HOWEVER OBSCURE, THAT WEREN'T EVEN ORDERED THAT MUCH
03:59PM 15 ONTO FINGERSTICK. SO THERE'S GOING TO BE VENOUS DRAWS.

03:59PM 16 JUST TO SUM UP. DR. ROSENDORFF WAS RUSHED, THE THEME THAT
03:59PM 17 THE GOVERNMENT HAD. THE GOVERNMENT SHOWED YOU THIS
03:59PM 18 EXHIBIT 1049 ABOUT DR. ROSENDORFF EXPRESSING CONCERNS ABOUT
03:59PM 19 GLUCOSE AND SODIUM.

03:59PM 20 THE DEFENSE HAD TO SHOW YOU ALL OF THESE OTHER EXHIBITS
03:59PM 21 THAT I'VE GONE THROUGH ABOUT WHAT REALLY HAPPENED.

03:59PM 22 THAT'S WHAT I MEAN WHEN I STARTED OUT, YOU KNOW, IF YOU
03:59PM 23 JUST SHOW, OKAY, HERE'S A PROBLEM, AND YOU NEVER SHOW WHAT THE
03:59PM 24 SOLUTION IS AND YOU DIDN'T KNOW ANYTHING ELSE, YOU GET THIS
03:59PM 25 VERY DISTORTED PICTURE OF WHAT REALLY HAPPENED. AND IT'S

03:59PM 1 REALLY IMPORTANT TO LOOK AT ALL OF THE EVIDENCE HERE AND NOT
03:59PM 2 JUST THE NARROW STORY THAT THE GOVERNMENT WANTS TO TELL.

03:59PM 3 LET'S TALK ABOUT BRINGING ASSAYS INTO THE CLIA LAB A
04:00PM 4 LITTLE BIT MORE.

04:00PM 5 SO THIS EXHIBIT SHOWS YOU WHAT IS BEING CONTEMPLATED BY
04:00PM 6 DR. YOUNG IN AUGUST OF 2013, MID-AUGUST. SO, AGAIN, YOU KNOW,
04:00PM 7 THE GOVERNMENT TALKS ABOUT THEIR -- YOU KNOW, THE EDISON DEVICE
04:00PM 8 IN PARTICULAR COULD ONLY DO 12 TESTS SUPPOSEDLY.

04:00PM 9 WELL, THIS IS DR. YOUNG'S EMAIL, NOT MR. BALWANI.

04:00PM 10 AND HE SAYS, "THE CURRENT LAUNCH LIST COVERS 200 TESTS.
04:00PM 11 THE COLLECTION OF THESE REPORTABLES COVERS MORE THAN 97 PERCENT
04:00PM 12 OF TEST FREQUENCY FOR THESE TWO MATRICES," THAT'S BLOOD AND
04:00PM 13 URINE.

04:00PM 14 SO AGAIN, THE IDERE IS TO DEVELOP A MENU OF TESTS THAT ARE
04:00PM 15 COVERING AS MUCH OF THE WATERFRONT OF COMMONLY ORDERED TESTS
04:00PM 16 THAT YOU CAN.

04:00PM 17 BLOOD TESTS FOR LAUNCH INCLUDE GC, ELISA, AND CYTOMETRY, A
04:00PM 18 TOTAL OF 158 TESTS/REPORTABLES.

04:00PM 19 THEN IT GOES ON ON THE BOTTOM, 92 ARE ELISA, THOSE ARE THE
04:00PM 20 IMMUNOASSAYS, AND THEN 62 ON EDISON.

04:00PM 21 SO DR. YOUNG IS REPORTING, THERE'S QUITE A LOT THAT COULD
04:01PM 22 BE PUT ON EDISON AT THIS TIME.

04:01PM 23 AND THEN DR. ROSENDORFF AGREED THAT THE DECISION TO PUT A
04:01PM 24 PARTICULAR ASSAY ONLINE, IT'S NOT JUST ABOUT COULD YOU PUT IT
04:01PM 25 ONLINE, COULD IT PASS THE VALIDATION PROCESS, BUT ALSO DOES IT

04:01PM 1 MAKE BUSINESS SENSE TO PUT THE ASSAY ONLINE.

04:01PM 2 IF YOU DON'T THINK YOU'RE GOING TO GET MANY ORDERS FOR IT,
04:01PM 3 MAYBE YOU DON'T WANT TO DO THAT.

04:01PM 4 AS I'VE SAID, THERE WAS THIS PHASE I, PHASE II ISSUE, AND
04:01PM 5 WE'LL TALK ABOUT IT MORE WHEN I TALK ABOUT WALGREENS, BUT WHEN
04:01PM 6 YOU'RE IN A CENTRAL LAB AND YOU'RE COLLECTING SAMPLES FROM
04:01PM 7 WALGREENS STORES, OR ANYWHERE, YOU WANT A MACHINE THAT DOES
04:01PM 8 HIGHER THROUGHPUT. THAT'S THE MODIFIED PREDICATES OR THE
04:01PM 9 PREDICATES AND NOT NECESSARILY THE EDISON DEVICE OR SOMETIMES
04:01PM 10 WHAT IS CALLED THE TSPU, THE THERANOS SAMPLE PROCESSING UNITS.

04:01PM 11 AND THIS IS WHAT THE TESTIMONY THAT I'M GOING TO SHOW YOU
04:01PM 12 IN A MINUTE, THAT DR. ROSENDORFF WAS GETTING AT.

04:01PM 13 SO I THINK THE GOVERNMENT SHOWED YOU THE ADVIA 1800 COULD
04:02PM 14 DO 1800 TESTS PER HOUR. THIS IS ABOUT THE IMMULITE ALSO COULD
04:02PM 15 DO MORE TESTS.

04:02PM 16 SO COMPARED TO THE EDISON, THESE TESTS, THESE DEVICES,
04:02PM 17 THESE COMMERCIAL DEVICES WERE DESIGNED TO DO A LOT MORE TESTS.
04:02PM 18 AND WHEN YOU'RE IN THIS PHASE I MODEL, CENTRAL LAB MODEL, YOU
04:02PM 19 WANT A DEVICE THAT COULD DO MORE TESTS, AND THAT'S WHY THERANOS
04:02PM 20 SPENT ALL OF THIS TIME AND EFFORT MODIFYING THE PREDICATE
04:02PM 21 DEVICES, AND YOU CAN LOOK AT THAT PATENT APPLICATION THAT I
04:02PM 22 WENT THROUGH BEFORE ABOUT WHAT WAS REPORTED TO THE PATENT
04:02PM 23 OFFICE ABOUT THE MODIFICATIONS TO MAKE SURE THAT THEY COULD DO
04:02PM 24 THIS HIGH THROUGHPUT TESTING WHILE THEY WERE IN THIS PHASE I
04:02PM 25 CENTRAL LAB MODEL BEFORE THEY GOT TO A POINT WHERE THEY COULD

04:02PM 1 PUT DEVICES INTO THE STORES. AND THERE WAS NO SECRET ABOUT
04:02PM 2 THAT. WALGREENS AND THERANOS HAD AGREED TO THAT PROCESS.

04:02PM 3 OKAY. I WANT TO SWITCH TOPICS HERE TO THE SUBJECT OF
04:02PM 4 QUALITY CONTROL.

04:02PM 5 SO QUALITY CONTROL IS IMPORTANT WHEN YOU'RE DOING BLOOD
04:03PM 6 TESTING, AND THERE'S BEEN A LOT OF DISCUSSION IN THIS TRIAL
04:03PM 7 ABOUT QUALITY CONTROL. SO I WANT TO GO THROUGH THE EVIDENCE
04:03PM 8 ABOUT HOW THAT WORKED AT THERANOS.

04:03PM 9 SO, FIRST OF ALL, EXHIBIT 1430, THIS IS DR. ROSENDORFF'S
04:03PM 10 POLICY ON QUALITY CONTROL. THAT WAS HIS JOB TO PUT THESE
04:03PM 11 POLICIES IN PLACE.

04:03PM 12 AND THE POLICIES HE'S PUTTING IN PLACE IS TO RUN AT LEAST
04:03PM 13 TWO LEVELS, I THINK IT'S SAFE TO SAY, ENSURE QC MATERIALS IS
04:03PM 14 NOT OUTDATED OR EXPIRED, AND THEN IT GOES THROUGH IF QC FAILS
04:03PM 15 WHAT YOU'RE SUPPOSED TO DO.

04:03PM 16 AND IF A QC DOESN'T PASS, AND WE'LL SEE THE TESTIMONY
04:03PM 17 ABOUT THIS IN A MINUTE, YOU CAN'T RUN THE PATIENT TEST IF THE
04:03PM 18 QC FAILS.

04:03PM 19 AND IT'S NOT JUST ONE LEVEL OF QC. IT'S TWO LEVELS OF QC.
04:03PM 20 SO IT'S GOT TO PASS ON THESE TWO LEVELS BEFORE YOU CAN USE ANY
04:03PM 21 PARTICULAR DEVICE FOR PATIENT TESTING, AND THAT IS DONE EVERY
04:04PM 22 SINGLE DAY. IN FACT, DR. ROSENDORFF TESTIFIED SOMETIMES IT'S
04:04PM 23 DONE MORE THAN ONCE A DAY.

04:04PM 24 SO MS. CHEUNG WHO WAS INVOLVED IN ACTUALLY RUNNING THESE
04:04PM 25 QC SAMPLES, SHE WASN'T INVOLVED IN PUTTING THE POLICY IN PLACE,

04:04PM 1 BUT ONE OF HER JOBS WAS TO RUN THE SAMPLES, SHE SAID -- THE
04:04PM 2 QUESTION WAS SO EVERY DAY, EVERY MACHINE THAT WAS RUNNING
04:04PM 3 SAMPLES HAD TO BE SUBJECTED TO A QUALITY CONTROL PROCEDURE?

04:04PM 4 AND SHE SAID THAT IS CORRECT.

04:04PM 5 AND IF IT DID NOT PASS THE QUALITY CONTROL, THEN IT COULD
04:04PM 6 NOT BE USED FOR THE PATIENT TESTING?

04:04PM 7 AND THAT IN FACT WAS HER UNDERSTANDING OF THE POLICY.

04:04PM 8 AND THEN IT GOES ON FURTHER.

04:04PM 9 IN ORDER FOR THE DEVICE TO BE CLEARED TO PASS THE QUALITY
04:04PM 10 CONTROL TEST, IT WOULD HAVE TO PASS ON BOTH OF THE LEVELS.

04:04PM 11 SHE SAID THAT'S CORRECT.

04:04PM 12 AND IF IT FAILED ONE, IT COULD NOT BE USED IN PATIENT
04:04PM 13 TESTING. THAT WAS THE PROCEDURE.

04:04PM 14 SHE AGREED THAT WAS CORRECT.

04:04PM 15 SO JUST TO BE VERY CLEAR, THE QC TEST IS A TEST USING -- I
04:05PM 16 THINK THE TESTIMONY AT TRIAL WAS ABOUT MATERIAL FROM A COMPANY
04:05PM 17 CALLED BIORAD, MAYBE AMONG OTHERS, SOME QUALITY CONTROL
04:05PM 18 MATERIAL THAT YOU'RE USING JUST TO SEE IF THE MACHINE IS
04:05PM 19 WORKING.

04:05PM 20 AND BY DEFINITION, YOU'RE NOT RUNNING -- WHEN YOU'RE
04:05PM 21 RUNNING A QUALITY CONTROL TEST, YOU'RE NOT GIVING A PATIENT A
04:05PM 22 RESULT. THIS IS BEFORE YOU COULD GIVE A PATIENT A RESULT. AND
04:05PM 23 IF THE MACHINE FAILS, YOU CAN'T EVEN USE THE MACHINE FOR THE
04:05PM 24 PATIENT RESULT.

04:05PM 25 AND DR. ROSENDORFF, OF COURSE, SAID THE SAME THING. CAN'T

04:05PM 1 USE IT FOR PATIENT TESTING IF IT FAILS QUALITY CONTROL.

04:05PM 2 AND THEN DR. ROSENDORFF -- IF WE GO TO THE NEXT SLIDE.

04:05PM 3 THE PREVIOUS ONE, SORRY.

04:05PM 4 IF YOU COULD GO TO SLIDE 82, MR. ALLEN. THANK YOU.

04:05PM 5 AND FAILURE IS DEFINED AS A FAILURE OF ONE OR MORE LEVELS?

04:05PM 6 DR. ROSENDORFF SAYS THAT'S CORRECT.

04:05PM 7 AND AGAIN, AS I SAID BEFORE, HE AGREES IT COULD NOT BE

04:06PM 8 USED FOR PATIENT TESTING AT THAT POINT IF IT FAILED EVEN ONE OF

04:06PM 9 THE LEVELS.

04:06PM 10 SO I JUST WANT TO TAKE A MOMENT TO TALK ABOUT SOME OF THE

04:06PM 11 TESTIMONY THAT I THINK THE GOVERNMENT REFERENCED IN THEIR

04:06PM 12 CLOSING ABOUT QUALITY CONTROL.

04:06PM 13 AND DR. ROSENDORFF HAD A SUGGESTION, IT WAS A LITTLE

04:06PM 14 BIZARRE, ABOUT HOW IF YOU HAD A CERTAIN RATE OF QUALITY CONTROL

04:06PM 15 FAILURE, LET'S SAY IT WAS 20 PERCENT, JUST TO PICK A NUMBER,

04:06PM 16 THAT SOMEHOW THE MACHINES THAT PASSED QUALITY CONTROL, IT WAS

04:06PM 17 AT THAT POINT -- I THINK THE NUMBER HE ACTUALLY USED WAS

04:06PM 18 50 PERCENT. SO IF YOU HAD A 50 PERCENT FAILURE, WHICH IS

04:06PM 19 HIGHER THAN WHAT WE'VE SEEN, BUT IF THERE WAS A 50 PERCENT

04:06PM 20 FAILURE OF QUALITY CONTROL, AND YOU COULDN'T USE THAT HALF OF

04:06PM 21 THE MACHINES, SO YOU LEFT WITH THE OTHER HALF, THAT SOMEHOW

04:06PM 22 THAT HALF THAT DID PASS WOULD STILL HAVE A 50 PERCENT CHANCE OF

04:06PM 23 BEING WRONG ON A PATIENT TEST, THERE'S NO LOGIC TO THAT.

04:06PM 24 FIRST OF ALL, THERE'S TWO LEVELS OF QUALITY CONTROL THAT

04:06PM 25 HAVE TO PASS. SO BY DEFINITION, THE MACHINES THAT HAVE PASSED,

04:07PM 1 ARE MACHINES THAT HAVE PASSED THE TWO LEVELS.

04:07PM 2 SO IT'S SORT OF LIKE IF YOU'RE SHIPPING A PRODUCT, IF YOU
04:07PM 3 HAVE A QUALITY CONTROL PROCESS AND YOU TAKE OUT THE ONES THAT
04:07PM 4 DON'T LOOK RIGHT THAT WON'T WORK, THAT DOESN'T MEAN THAT THE
04:07PM 5 REST OF THE PRODUCTS THAT YOU'RE SHIPPING WOULD SOMEHOW BE
04:07PM 6 SUBJECT TO THE SAME FAILURE RATE. THAT'S THE PURPOSE OF
04:07PM 7 QUALITY CONTROL, TO WEED OUT THE ONES THAT SHOULDN'T BE USED.
04:07PM 8 AND THAT'S WHAT WAS GOING ON HERE.

04:07PM 9 SO THERE WAS A PROCESS, NOT MR. BALWANI'S PROCESS. IT WAS
04:07PM 10 DR. ROSENDORFF'S PROCESS. AS HE TESTIFIED, IF HE WANTED TO
04:07PM 11 CHANGE THE PROCESS, IF HE THOUGHT HE SHOULD DO MORE LEVELS,
04:07PM 12 WHATEVER HE WANTED, HE COULD PUT THE POLICY IN PLACE. WE SAW
04:07PM 13 HE'S THE PERSON UNDERSTANDABLY WHO PUT THE QUALITY CONTROL
04:07PM 14 PROCESS IN PLACE.

04:07PM 15 NOW, YOU'VE HEARD SOME TALK ABOUT THIS SO-CALLED OUTLIERS
04:07PM 16 ISSUE. SO THIS IS -- AND THE GOVERNMENT MENTIONED THIS IN
04:07PM 17 THEIR CLOSING, WHERE YOU HAVE THESE SIX DATA POINTS AND THEN
04:08PM 18 YOU COULD DISREGARD TWO OF THEM, RIGHT?

04:08PM 19 SO, FIRST OF ALL, WHAT THE GOVERNMENT TOLD YOU IN CLOSING
04:08PM 20 WAS THAT YOU WOULD NEED THREE THERANOS DEVICES TO GET THE SIX
04:08PM 21 RESULTS, BECAUSE THERE WOULD BE TWO RESULTS ON EACH. SO THREE
04:08PM 22 TIMES TWO IS SIX. BUT ACTUALLY DR. ROSENDORFF TESTIFIED THAT
04:08PM 23 LATER THE EDISON DEVICE WAS IMPROVED WHERE IT COULD RUN AND GET
04:08PM 24 SIX RESULTS.

04:08PM 25 IN ANY EVENT, YOU'VE GOT THESE SIX RESULTS, AND THE

04:08PM 1 QUESTION IS DO YOU HAVE TO AVERAGE ALL SIX RESULTS OR COULD YOU
04:08PM 2 THROW OUT TWO OF THEM?

04:08PM 3 WHAT WE HEARD AT TRIAL WAS THAT THE SCIENTISTS THOUGHT YOU
04:08PM 4 COULD DISREGARD TWO OF THE RESULTS. AND IT WASN'T MR. BALWANI
04:08PM 5 MAKING THAT DECISION.

04:08PM 6 LET'S LOOK AT THIS EMAIL. THIS IS EXHIBIT 1525, WHICH,
04:08PM 7 AGAIN, WE THE DEFENSE, HAD TO SHOW YOU. IF YOU GO TO THE
04:08PM 8 EARLIEST ONE IN TIME ON THE SCREEN THERE.

04:09PM 9 DR. ROSENDORFF SAYS, "HI ERIKA," SPEAKING TO MS. CHEUNG,
04:09PM 10 "YES, WE CAN DELETE AS MANY AS 2 OF THE 6 DATA POINTS."

04:09PM 11 DR. PANDORI SAYS, "ADAM,
04:09PM 12 "IS THIS SOMETHING THAT CLIA CAN STAND ON AS A POLICY OR
04:09PM 13 DO YOU WANT THEM TO CHECK WITH US BEFORE DOING THIS."

04:09PM 14 DR. ROSENDORFF SAYS, "THIS RULE WILL BE PART OF AN
04:09PM 15 ALGORITHM WHEN THE EDISON 3.5 CALCULATIONS ARE AUTOMATED."

04:09PM 16 SO THAT'S IN THE WORKS APPARENTLY.

04:09PM 17 DR. PANDORI SAYS, "OK, SO IT IS OK FOR THE CLA," THE
04:09PM 18 CLINICAL LAB ASSISTANT OR ASSOCIATE LIKE MS. CHEUNG, "TO DO
04:09PM 19 THIS AUTOMATICALLY UNTIL THEN I ASSUME?"

04:09PM 20 AND THEN DR. ROSENDORFF SAYS, "YES, IT'S OK IF THEY DO
04:09PM 21 IT -- THAT IS WHY WE ARE RUNNING 3 EDISONS -- TO GET ENOUGH
04:09PM 22 DATA POINTS AND TO AVERAGE OUT VARIABILITY."

04:09PM 23 AND DR. PANDORI RESPONDS, "THANK YOU."

04:10PM 24 SO IT'S DR. ROSENDORFF HIMSELF WHO IS APPROVING THIS
04:10PM 25 POLICY OF DELETING TWO OF THE SIX DATA POINTS, THE OUTLIERS.

04:10PM 1 IT'S NOT MR. BALWANI. NO ONE IS FORCING DR. ROSENDORFF TO DO
04:10PM 2 THAT. HE THINKS THAT'S A SCIENTIFICALLY VALID PROCESS TO
04:10PM 3 AVERAGE OUT VARIABILITY. THAT'S WHAT HE SAYS IN A CONVERSATION
04:10PM 4 WITH DR. PANDORI AND MS. CHEUNG.

04:10PM 5 SO DR. ROSENDORFF IS ASKED SPECIFICALLY ABOUT THAT IN
04:10PM 6 CROSS-EXAMINATION, ABOUT THIS VERY DOCUMENT. "SO YOU'RE
04:10PM 7 APPROVING OF THE PROCESS?"

04:10PM 8 HE SAYS, "YES." THAT'S HIS TESTIMONY UNDER OATH.

04:10PM 9 HE ALSO TESTIFIED THAT HE WAS WORKING ON AN ALGORITHM FOR
04:10PM 10 THE PROCESS.

04:10PM 11 AND THAT'S NOT THE ONLY SCIENTIST. MS. CHEUNG ON THE
04:10PM 12 STAND WAS ASKED ABOUT ANOTHER DOCUMENT WHERE DR. SIVARAMAN WAS
04:10PM 13 APPROVING OUTLIER REMOVAL PROCESS, AND SHE SAID THAT'S WHAT SHE
04:10PM 14 WAS DOING.

04:10PM 15 AND THE QUESTION WAS, "DO YOU THINK SHE WAS TRYING TO DO
04:10PM 16 SOMETHING WRONG?"

04:10PM 17 SHE SAID, "NO. I THINK SHE WAS TRYING TO COMPLETE THE
04:11PM 18 REPORT."

04:11PM 19 AND THEN GO THROUGH A LITTLE BIT DR. SIVARAMAN'S
04:11PM 20 QUALIFICATIONS.

04:11PM 21 AND THE QUESTION TO MS. CHEUNG WAS "AND THAT'S WHAT SHE
04:11PM 22 DECIDED THAT WOULD BE APPROPRIATE TO DELETE OUTLIERS."

04:11PM 23 THAT'S DR. SIVARAMAN.

04:11PM 24 AND MS. CHEUNG SAYS, "YES."

04:11PM 25 SO IF MS. CHEUNG AGREED WITH DR. ROSENDORFF AND

04:11PM 1 DR. SIVARAMAN ABOUT THIS, YOU KNOW, SHE HAS A RIGHT AND SHE
04:11PM 2 COULD CERTAINLY RAISE THE ISSUE. AND SHE DID, AND SHE WAS
04:11PM 3 LISTENED TO.

04:11PM 4 BUT ULTIMATELY YOU HAVE TO GO WITH YOUR LAB DIRECTOR AND
04:11PM 5 YOUR PH.D. SCIENTIST ABOUT WHAT THE APPROPRIATE THING TO DO
04:11PM 6 HERE WOULD BE.

04:11PM 7 AND MR. BALWANI WOULD HAVE NO OTHER GUIDANCE OTHER THAN
04:11PM 8 THAT.

04:11PM 9 SO THIS OUTLIERS PROCESS IN TERMS OF THE CRIMINAL CHARGES
04:11PM 10 IN THIS CASE IS -- YOU KNOW, IT WAS A RED HERRING, AND IT WAS,
04:11PM 11 AGAIN, THE DEFENSE WHO HAD TO SHOW YOU THIS EVIDENCE BECAUSE
04:11PM 12 THE GOVERNMENT WAS JUST TALKING ABOUT OUTLIERS LIKE THERE WAS
04:12PM 13 SOMETHING NEFARIOUS WITHOUT SHOWING YOU EXACTLY WHAT HAPPENED.

04:12PM 14 THE COURT: WOULD THIS BE A GOOD TIME TO BREAK YOUR
04:12PM 15 ARGUMENT?

04:12PM 16 MR. COOPERSMITH: IT WOULD BE, YOUR HONOR, YEAH.

04:12PM 17 THE COURT: PARDON ME FOR INTERRUPTING YOU,
04:12PM 18 MR. COOPERSMITH.

04:12PM 19 LET'S TAKE OUR EVENING RECESS NOW LADIES AND GENTLEMEN.
04:12PM 20 WE'LL BE BACK SUCH THAT WE CAN BEGIN AT 9:00 A.M. TOMORROW.

04:12PM 21 LET ME AGAIN REMIND YOU OF THE ADMONITION THAT IS STILL IN
04:12PM 22 PLACE. PLEASE DO NOT READ, LISTEN, TRY TO DISCOVERY IN ANY
04:12PM 23 WAY, DO ANYTHING TO LEARN ANYTHING ABOUT THIS CASE DURING OUR
04:12PM 24 BREAK.

04:12PM 25 AND ALSO PLEASE RECALL THAT YOU ARE NOT TO BEGIN ANY

04:12PM 1 DELIBERATIONS OR ANY DISCUSSION AMONGST YOURSELVES OR ANYONE
04:12PM 2 ELSE, OF COURSE, ABOUT THE CASE UNTIL THE MATTER HAS BEEN GIVEN
04:12PM 3 TO YOU FOR YOUR DELIBERATIONS. AND THAT WOULD ONLY OCCUR AFTER
04:12PM 4 ALL ARGUMENTS AND THE COURT'S INSTRUCTIONS.

04:12PM 5 WITH THAT ADMONITION, HAVE A GOOD EVENING.

04:12PM 6 IT'S THE SUMMER SOLACE, SO THERE'S PLENTY OF LIGHT LEFT
04:13PM 7 FOR YOU TO ENJOY TODAY. THE LONGEST DAY OF THE YEAR. ENJOY
04:13PM 8 ALL OF IT.

04:13PM 9 WE'LL SEE YOU TOMORROW MORNING. THANK YOU.

04:13PM 10 (JURY OUT AT 4:13 P.M.)

04:13PM 11 THE COURT: PLEASE BE SEATED. THANK YOU. THE
04:13PM 12 RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR THE EVENING.

04:13PM 13 BEFORE WE LEAVE, I WANTED TO ASK ARE THERE ANY THINGS THAT
04:13PM 14 THE PARTIES WANTED TO DISCUSS BEFORE WE END FOR THE DAY?

04:13PM 15 MR. SCHENK: NO, YOUR HONOR.

04:13PM 16 MR. COOPERSMITH: NO, YOUR HONOR.

04:13PM 17 THE COURT: ALL RIGHT. HAVE A GOOD EVENING. WE'LL
04:13PM 18 SEE YOU TOMORROW MORNING. THANK YOU.

04:13PM 19 MR. COOPERSMITH: THANK YOU.

04:13PM 20 (COURT ADJOURNED AT 4:13 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JUNE 21, 2022